Oregon Medical Board

BOARD ACTION REPORT

October 15, 2013

The information contained in this report summarizes new, interim, and final actions taken by the Oregon Medical Board between September 16, 2013 and October 15, 2013.

Scanned copies of Interim Stipulated Orders, Orders of Emergency Suspension, Stipulated Orders, Corrective Action Agreements, Final Orders, Termination Orders, Modification Orders and Voluntary Limitations are included at the end of this report in the order that they appear in the report. These orders are marked with an * asterisk. **Scanned copies of Consent Agreement are not posted, as they are not disciplinary action and impose no practice limitations**. Complaint and Notices of Proposed Disciplinary Action are not listed in this report, as they are not final actions by the Board. Both Orders, however, are public and are available upon request.

Printed copies of the Board Orders not provided with this report are available to the public. To obtain a printed copy of a Board Order not provided in this report, please complete a Service Request Form (http://egov.oregon.gov/BME/PDFforms/VerDispMalFillin.pdf) found under the Licensee Information Request Form link on the Board's web site, submit it with the $10.00 fee *per licensee* and mail to:

Oregon Medical Board
1500 SW 1st Ave, Ste 620
Portland, OR 97201

Copies of the Orders listed below are mailed to Oregon hospitals where the Licensee had self-reported that he/she has privileges.

***Andrews, David Anker, MD; MD09145; Hillsboro, OR**
On September 27, 2013, Licensee entered into an Interim Stipulated Order to voluntarily cease the prescribing of all controlled substances pending the completion of the Board's investigation into his ability to safely and competently practice medicine. Additionally, Licensee agrees to close his private practice clinic, work only in practice settings approved by the Board's Medical Director (at which time he may resume prescribing), and notify patients who received non-FDA approved IUDs.

***Bailey, William Merrill, MD; MD14622; Newberg, OR**
On October 3, 2013, Licensee entered into a Stipulated Order with the Board for unprofessional or dishonorable conduct, and gross or repeated acts of negligence. This Order reprimands Licensee; assesses a civil penalty of $5,000; requires Licensee to undergo a CPEP assessment; requires Licensee to obtain a consultant to review his office policies; and requires Licensee to complete a pre-approved boundaries course.

***Beckmann, Brooke Robert, DPM; DP00434; Salem, OR**
On October 3, 2013, the Board issued a Final Order. This Order upholds the Board's August 1, 2013 Order of Emergency Suspension.

*__Bost, Dawn Elizabeth, MD; MD16820; Aloha, OR__
On October 3, 2013, Licensee entered into a Corrective Action Agreement with the Board. In this Agreement, Licensee agreed to limit her work hours to 40 hours per week, and practice at a Board-approved site with a Board-approved mentor.

*__Cheon, Sung Jin, LAc; AC01102; Beaverton, OR__
On October 3, 2013, the Board issued an Order Terminating Corrective Action Agreement. This Order terminates Licensee's January 13, 2011, Corrective Action Agreement.

*__Cross, Lorne Max, MD; MD27400; Portland, OR__
On October 4, 2013, Licensee entered into an Interim Stipulated Order to voluntarily withdraw from practice and place his license in Inactive status pending the completion of the Board's investigation into his ability to safely and competently practice medicine.

*__Dempsey, Jackson Tyler, MD; MD15946; Medford, OR__
On October 3, 2013, Licensee entered into a Stipulated Order with the Board for unprofessional or dishonorable conduct. This Order reprimands Licensee and requires Licensee to be followed by a Board-approved healthcare provider.

*__Farris, Clyde Alan, MD; MD11437; West Linn, OR__
On October 3, 2013, the Board issued an Order Terminating Corrective Action Agreement. This Order terminates Licensee's October 11, 2012, Corrective Action Agreement.

*__Imperia, Paul Steven, MD; MD17163; Medford, OR__
On October 3, 2013, the Board issued an Order Terminating Stipulated Order. This Order terminates Licensee's August 5, 2010, Stipulated Order.

*__Lai, Wallace, MD; MD17813; Salem, OR__
On October 3, 2013, the Board issued an Order Modifying Stipulated Order. This Order modifies Licensee's January 14, 2010 Stipulated Order.

*__Lee, Carma Jane, MD; MD21672; Portland, OR__
On October 3, 2013, the Board issued an Order Terminating Stipulated Order. This Order terminates Licensee's October 6, 2011, Stipulated Order.

*__Mozena, Joseph Michael, DPM; Applicant; Portland, OR__
On October 3, 2013, the Board issued a Final Order. This Order denies the application to practice podiatric medicine in Oregon and assesses the costs of the contested case hearing. The Board issued the Bill of Costs on October 15, 2013.

*__Park, Jae Ok, MD; MD13752; Beaverton, OR__
On September 23, 2013, Licensee entered into an Interim Stipulated Order to voluntarily cease the prescribing of all scheduled controlled substances pending the completion of the Board's investigation into his ability to safely and competently practice medicine.

*__Polchert, Susan Elizabeth, MD; MD16479; Eugene, OR__
On October 3, 2013, the Board issued an Order Terminating Consent Agreement. This Order terminates Licensee's October 11, 2012, Consent Agreement.

*__Purtzer, Thomas John, MD; MD12880; Medford, OR__
On September 24, 2013, Licensee entered into an Interim Stipulated Order to voluntarily discontinue treating new or existing patients with chronic pain medication or Suboxone, pending the completion of the Board's investigation into his ability to safely and competently practice medicine.

*__Robinson, Michael Truman, DO; DO10555; Central Point, OR__
On October 3, 2013, the Board issued an Order Terminating Corrective Action Agreement. This Order terminates Licensee's July 12, 2012, Corrective Action Agreement.

__Sasich, Randy Louis, MD; MD28977; Portland, OR__
On October 3, 2013, Licensee entered into a Consent Agreement with the Board. In this Agreement, Licensee agreed to practice for six months under the supervision of a Board-approved mentor who will submit a report to the Board, and complete the recertification process with the American Board of Internal Medicine.

*__VanderVeer, Elizabeth, MD; MD23287; Portland, OR__
On October 3, 2013, Licensee entered into a Stipulated Order with the Board for unprofessional or dishonorable conduct; making statements that the licensee knows, or with the exercise of reasonable care should know, are false or misleading regarding skill or efficacy or value of the medicine, treatment or remedy prescribed or administered; and gross or repeated negligence. This Order reprimands Licensee; prohibits Licensee from providing low calorie (1200 calories or less) diet plans to her patients; prohibits Licensee from prescribing hCG; requires Licensee to complete pre-approved courses on obesity and diet plans; and assesses a $10,000 civil penalty ($5,000 of which is held in abeyance).

*__Welker, Kenneth Jay, MD; MD22731; Lake Oswego, OR__
On September 19, 2013, Licensee entered into an Interim Stipulated Order in which he agreed to cease performing Adipose Derived Mesenteric Cell Harvesting and Transfer (stem cell) therapy for any patient, pending the completion of the Board's investigation into his ability to safely and competently practice medicine.

If you have any questions regarding this service, please call the Board at (971) 673-2700 or toll-free within Oregon at (877) 254-6263.

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of DAVID ANKER ANDREWS, MD LICENSE NO. MD09145	)	INTERIM STIPULATED ORDER

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. David Anker Andrews, MD (Licensee) is a licensed physician in the state of Oregon and holds an active medical license.

2.

The Board received credible information regarding Licensee that resulted in the Board initiating two separate investigations. The results of the Board's investigations to date have raised concerns to the extent that the Board believes it necessary that Licensee agree to certain terms until the investigation is completed.

3.

In order to address the Board's concern, Licensee and the Board agree to the entry of this Interim Stipulated Order, which will remain in effect while this matter remains under investigation, and provides that Licensee shall comply with the following conditions:

3.1 Licensee must immediately cease prescribing any controlled substances to patients, family, friends or himself.

3.2 Licensee agrees to close the Hillsboro Women's Clinic, his private practice clinic, within two weeks (14 calendar days) of the effective date of this Order. Licensee agrees to destroy all existing blank prescriptions from his private practice clinic.

3.3 Licensee agrees not to engage in the solo practice of medicine.

3.4 Licensee must develop a written procedure for former patients of the Hillsboro Women's Clinic to obtain a copy of their clinic medical records and provide a copy of that procedure to the Board.

3.5 Any future practice setting of Licensee must be approved by the Board's Medical Director, and in any such practice, Licensee must work under a supervising physician who has been pre-approved by the Board's Medical Director. The supervising physician must submit quarterly reports to the Board regarding Licensee's practice.

3.6 Licensee may resume prescribing of all medications only for patients seen in the Board-approved practice setting.

3.7 Within one week of the effective date of this Order, Licensee must notify all patients with Mirena IUDs, obtained from non-FDA approved sources, that the IUD has not been approved by the FDA.

3.8 Licensee must comply with all DEA regulations, to include 21 CFR 1301.76, which prohibits the employment of any person previously convicted of a felony drug offense.

3.9 Licensee understands that violating any term of this Order will be grounds for disciplinary action under ORS 677.190(17).

3.10 Licensee must obey all state laws and regulations pertaining to the practice of medicine.

3.11 Licensee understands this Order becomes effective the date he signs it.

4.

At the conclusion of the Board's investigation, the Board will decide whether to close the case or to proceed to some form of disciplinary action. If the Board determines, following that review, not to lift the requirements of this Order, Licensee may request a hearing to contest that decision.

5.

This order is issued by the Board pursuant to ORS 677.410, which grants the Board the authority to attach conditions to the license of Licensee to practice medicine. These conditions

will remain in effect while the Board conduots a complete investigation in order to fully inform itself with respect to the conduct of Licensee. Pursuant to ORS 677.425, Board investigative materials are confidential and shall not be subject to public disclosure, nor shall they be admissible as evidence in any judicial proceeding. However, as a stipulation, this Order is a public document and is reportable to the National Databank and the Federation of State Medical Boards.

IT IS SO STIPULATED THIS 27th day of Sept, 2013.

SIGNATURES REDACTED

DAVID ANKER ANDREWS, MD

IT IS SO ORDERED THIS 30th day of September, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURES REDACTED

JOSEPH THALER, MD
MEDICAL DIRECTOR

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of WILLIAM MERRILL BAILEY, MD LICENSE NO. MD14622	)))))	STIPULATED ORDER

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. William Merrill Bailey, MD (Licensee) is a physician licensed in the state of Oregon.

2.

On April 5, 2013, the Board issued a Complaint and Notice of Proposed Disciplinary Action in regards to Licensee. In this document, the Board proposed to take disciplinary action by imposing up to the maximum range of potential sanctions identified in ORS 677.205(2), to include the revocation of license, a $10,000 fine, and assessment of costs, pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined by ORS 677.188(4)(a); and ORS 677.190(13) gross or repeated acts of negligence.

3.

Licensee is a board certified family medicine physician. Licensee's acts and conduct that violated the Medical Practice Act are:

3.1 Patient A, a 49 year old, 165 pound male, presented to Licensee on November 3, 2006 complaining of persistent pain in the left lower quadrant of the abdomen and testicle that started a year prior to the appointment and had become worse over the last few months. Licensee conducted an examination and found no abdominal masses, but noted a weak abdominal wall and in his assessment, noted "Inguinal hernia, bilateral without mention of

obstruction or gangrene." Patient A returned for a physical examination on November 22, 2006, at which time Licensee noted Patient A's weight to be 165 pounds and reported a weight loss of 25 pounds over six months with complaints of abdominal pain and stomach pressure. Licensee's assessment included inguinal hernia and a pulsatile abdominal mass. Lab work collected on November 18, 2006 reported a hematocrit (HCT) level of 49.9%. Licensee ordered an ultrasound of the abdomen, which reported no visual mass, and referred Patient A to undergo surgery for hernia repair. The ultrasound report by the radiologist notes that "given the history, a CT of abdomen and pelvis would be recommended" but Licensee failed to order any additional studies. Patient A returned on December 4, 2006 for a follow up clinical visit. Licensee noted "Left inguinal area tender to deep palp. without masses." Patient A underwent successful surgery for hernia repair on January 10, 2007. Patient A walked into the Emergency Department (ED) of Newberg Medical Center on July 6, 2008 complaining of diarrhea, problems urinating and chills. Patient A's HCT was 42.5%. A copy of the ED report was sent to Licensee, who did not follow-up. In February of 2009, Patient A presented to a clinician with symptoms of continuing weight loss, abdominal distension and changes in bowel habits. The clinician ordered a Computed Tomography (CT) scan of the abdomen and pelvis, which demonstrated ascites, multiple liver metastases, omental caking, and a mass in the sigmoid colon. Patient A was diagnosed with abdominal carcinomatosis, with a primary tumor located in the sigmoid colon. Treatment was not successful and Patient A expired in June of 2010. Licensee failed to adequately work up Patient A's unresolved symptoms of a 25 pound weight loss and persistent abdominal pain, to include failing to develop a differential diagnosis, failing to schedule Patient A for regular follow up in order to pursue the symptoms to establish a conclusive diagnosis, to include endoscopy of the colon.

3.2 The Board's investigation included a review of charts for Patients B – F, who presented to Licensee with complaints of abdominal pain. The Board's review reveals a pattern of substandard care, to include failing to work up the patients to develop a differential diagnosis and plan for regular follow up in order to arrive at a conclusive diagnosis or referral, and failing

to recommend screening colonoscopy. Specific concerns related to patient care include the following:

a. On March 7, 2012, Patient B, a 61 year old male, presented to Licensee with complaints of central abdominal pain, bloating and lack of energy. Licensee's assessment listed "abdominal pain, epigastric" and hyperlipidemia and prescribed dexlansoprazole, 60 mg (Dexilant). On March 13, 2012, Patient B returned and reported feeling better. Licensee failed to chart whether Patient B was current for colon cancer screening or to offer colon cancer screening.

c. Patient C, a 51 year old female, presented to Licensee on August 30, 2011, with complaints of abdominal fullness that had persisted for six months, and that it feels "like there is a mass in there." Licensee's assessment included abdominal pain, left lower quadrant. Licensee note states "consider colonoscopy" but there is no indication that this was offered to the patient. In follow up, Licensee ordered an ultra sound and screening for cervical cancer, which were normal. No plans for additional follow-up visits or referral were made.

d. Patient D, 56 year old male, presented to Licensee on August 2, 2011 with a complaint of right lower quadrant pain when sitting for the past month. Licensee's assessment included inguinal hernia and was subsequently referred for surgical hernia repair. Licensee did not chart any discussion of the need for colon cancer screening.

e. Patient E, a 53 year old male, presented to Licensee on May 31, 2011 with a sudden onset of abdominal pain that had started 18 hours previously, and progressed to the point where he could hardly move. Patient E's white count and complete urine panel were normal. Licensee's assessment listed "abdominal pain, left lower quadrant." Treatment consisted of naproxen (Aleve). On June 3, 2011, Patient E called the clinic to report ongoing pain in the lower left quadrant that did not resolve with Aleve. Licensee started Patient E on acetaminophen with codeine and referred Patient E to a gastroenterologist, who saw Patient E on June 11, 2011. This clinician diagnosed

possible mild diverticulitis that "had run its course at this point and was rather mild..." and scheduled Patient E for a colonoscopy. In this case, Licensee did not consider diverticulitis or order a colonoscopy in his work-up of this patient, but did make an appropriate referral.

f. Patient F, a 49 year old male, presented to Licensee on May 25, 2006, with a complaint of severe stomach cramps that started five days previous. Patient F denied nausea, diarrhea, constipation, or history of irritable bowel syndrome. Nevertheless, Licensee's assessment included irritable bowel syndrome and viral gastroenteritis, and directed Patient F to stop taking naproxen, and start celecoxib (Celebrex), 200 mg, and hyoscyamine (Levsin), 0.125 mg. Patient F was instructed to follow-up as needed, but there was no plan for follow-up or additional work up. Patient F returned to the clinic in November of 2006 to complain of continuing abdominal pain and diarrhea. Licensee's assessment was gastroenteritis. Licensee ordered lab work and continued Patient F on Levsin. Patient F returned for a scheduled follow up visit on December 6, 2006, and reported continuing diarrhea and joint pain with chills. Licensee's assessment was salmonella gastroenteritis. Patient F was told to return to the clinic as needed. Licensee did not order or discuss the need for colon cancer screening with Patient F. On June 16, 2008, Patient F underwent a colonoscopy that demonstrated two small polyps, one of which was an adenoma in the sigmoid colon, a premalignant lesion, as well as diverticulosis of the sigmoid.

3.3 In March of 2008, Licensee employed Patient G, a 22 year old female, as a medical assistant. Licensee directed the medical assistants of his clinic to perform digital rectal examinations (DRE) and administer enemas to his patients. In what he has described as an effort to instruct Patient G, Licensee asked Patient G to perform a DRE on him and to administer an enema. Patient G reluctantly complied with her employer's request. Licensee did not provide a chaperone. On a different occasion, Licensee had Patient G administer a second enema to him. On another occasion Licensee offered to administer an enema to Patient G and she declined.

4.

Licensee and the Board desire to settle this matter by the entry of this Stipulated Order. Licensee understands that he has the right to a contested case hearing under the Administrative Procedures Act (Chapter 183 Oregon Revised Statutes), and fully and finally waives the right to a contested case hearing and any appeal therefrom by the signing of and entry of this Order in the Board's records. Licensee admits that he engaged in the conduct described in paragraph 3, and that this conduct violated ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined by ORS 677.188(4)(a); and ORS 677.190(13) gross or repeated acts of negligence. Licensee understands that this Order is a public record and is a disciplinary action that is reportable to the National DataBank and the Federation of State Medical Boards.

5.

Licensee and the Board agree to resolve this matter by the entry of this Stipulated Order subject to the following terms:

5.1 Licensee is reprimanded.

5.2 Licensee must pay a civil penalty of $5,000, which must be paid in full no later than 120 days from the date this Order is signed by the Board Chair. This fine may paid with installment payments of no less than $1,000.

5.3 Within 180 days from the signing of this Order by the Board Chair, Licensee must at his own expense complete a physician assessment at the Center for Personalized Education for Physicians (CPEP). Licensee must sign all necessary releases to allow full communication and exchange of documents and reports between the Board and CPEP. Licensee will comply with all CPEP recommendations for educational remediation.

5.4 Within 180 days from the signing of this Order by the Board Chair, Licensee must, at his own expense, obtain a consultant to review his office and personnel management policies. This consultant must be pre-approved by the Board's Medical Director. Licensee must satisfactorily implement any and all recommendations of the consultant.

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5.5 Within nine months of the signing of this Order by the Board Chair, Licensee must complete a course in professional boundaries which has been pre-approved by the Board's Medical Director.

5.6 Licensee stipulates and agrees that any violation of the terms of this Order shall be grounds for further disciplinary action under ORS 677.190(17).

IT IS SO STIPULATED this 4th day of September 2013.

SIGNATURE REDACTED

WILLIAM MERRILL BAILEY, MD

IT IS SO ORDERED this 3rd day of October 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER MCKIMMY, MD
Board Chair

BEFORE THE
OREGON MEDICAL BOARD
STATE OF OREGON

IN THE MATTER OF:	)	
	)	
BROOKE ROBERT BECKMANN, DPM	)	FINAL ORDER
License No. DP00434	)	
	)	

HISTORY OF THE CASE

On August I, 2013, the Oregon Medical Board (Board) issued an Order of Emergency Suspension to Brooke Robert Beckmann, D.P.M., ordering the immediate suspension of Dr. Beckmann's license to practice as a podiatric physician[1] in Oregon, and ordering that Dr. Beckmann immediately cease the practice of podiatric medicine until otherwise ordered by the Board. On or about August 6, 2013, Dr. Beckmann requested an administrative hearing.

On August 12, 2013, the Board referred the matter to the Office of Administrative Hearings (OAH). The OAH received the referral on August 19, 2013.

On August 22, 2013, Senior Administrative Law Judge (ALJ) Monica A. Whitaker of the OAH convened a prehearing conference via telephone. Senior Assistant Attorney General Warren Foote represented the Board. Dr. Beckmann represented himself. ALJ Whitaker scheduled a hearing for September 6, 2013, and established a deadline for the submission of exhibits and witness lists.

On September 6, 2013, Senior ALJ Jennifer H. Rackstraw of the OAH convened a hearing at the Board's office in Portland, Oregon. Mr. Foote represented the Board. Dr. Beckmann represented himself. The following witnesses testified for the Board: Dr. Beckmann; Paul Conti, M.D.; and Mei-Mei Wang, investigator for the Board. Dr. Beckmann also testified on his own behalf. Also present at the hearing were Dennis Dalton, protection specialist; and Mary Jacks, court reporter. The evidentiary record closed at the conclusion of the hearing on September 6, 2013. On September 12, 2013, ALJ Rackstraw received a transcript of the proceedings.

On September 18, 2013, ALJ Rackstraw issued a Proposed Order. Dr. Beckmann filed no exceptions.

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[1] A podiatric physician treats "ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle." ORS 677.010(14).

ISSUE

Whether the Board's Order of Emergency Suspension should be upheld on the ground that Dr. Beckmann's continued practice of podiatric medicine would pose an immediate danger to the public. ORS 677.205(3); OAR 137-003-0560(6), (7).

EVIDENTIARY RULINGS

The Board offered Exhibits A1 through A16. Dr. Beckmann offered Exhibits R1 and R2. All exhibits were admitted into the record without objection. In addition, the Board's Pleadings P1 through P4 were made a part of the record.

FINDINGS OF FACT

1. In 2005, Dr. Beckmann received a degree in podiatric medicine from Sholl College of Podiatric Medicine at Rosalind Franklin University. He thereafter completed two years of a residency program in podiatric medicine and surgery at (what was then called) OCPM Richmond Heights Hospital University. (Test. of Dr. Beckmann.)

2. In February 2007, Dr. Beckmann and his then-wife, Heather Beckmann, filed for divorce. In approximately August 2007, Dr. Beckmann moved to Oregon. At that time, Ms. Beckmann and their two daughters were living in Oregon. In October 2007, the divorce was finalized. (Test. of Dr. Beckmann.)

3. Since October 3, 2007, Dr. Beckmann has been a licensed podiatric physician in Oregon. (Ex. A1 at 1.)

4. On April 22, 2008, Dr. Beckmann underwent a psychological evaluation with psychologist Howard L. Deitch, Ph.D. (Ex. A10 at 1-8.) Heather Beckmann had requested the evaluation to determine whether it was safe for Dr. Beckmann to have unsupervised visitation with their daughters. In a letter written in support of the evaluation, Ms. Beckmann stated that she had concerns regarding Dr. Beckmann's misdirected anger, impulsive and inappropriate decision-making, risky and excessive behaviors, paranoia, and drug and alcohol abuse. Ms. Beckmann also expressed her belief that Dr. Beckmann was having hallucinations and exhibiting delusional behavior. (*Id.* at 1.) In a written report, Dr. Deitch noted, in part, that Dr. Beckmann "was oriented as to person, place and time and showed no evidence of a thought disorder, psychotic symptoms or obvious gross mental health dysfunction." (*Id.* at 5.) Dr. Deitch concluded that the results of the evaluation did not indicate that Dr. Beckmann had any "significant mental health or personality disorder concerns, apart from some reactive stress related to his circumstances." (*Id.* at 7.) Dr. Deitch diagnosed Dr. Beckmann with adjustment disorder, unspecified. (*Id.*)

5. From approximately September 2008 to June 2009, Dr. Beckmann performed podiatric work for the Salem Foot Clinic as an independent contractor. (Test. of Dr. Beckmann; Ex. R2.) In a letter to Dr. Beckmann dated April 7, 2009, Richard W. Peffley, D.P.M., of the Salem Foot Clinic informed Dr. Beckmann that had had concerns regarding Dr. Beckmann's

"productivity and conduct inside and outside the office." (Ex. R2.) Dr. Peffley specifically noted concerns regarding Dr. Beckmann's patient retention rate and his professional image and lack of professional demeanor. (*Id.*)

6. Dr. Beckmann subsequently moved to Texas and allowed his Oregon podiatric license to lapse. In 2010, he returned to Oregon and applied for reactivation of the license. The Board had concerns about his ability to resume practice, including concerns that he might be impaired due to substance abuse or a psychiatric disorder. The Board therefore ordered that he undergo a behavioral evaluation. (Exs. A1 at 1, 3; A8 at 1; test. of Wang.)

7. On August 12, 2010, Glenn Maynard, L.P.C., evaluated Dr. Beckmann. (Ex. A8 at 1-4.) Mr. Maynard did not provide any psychiatric diagnosis for Dr. Beckmann, but he did note that Dr. Beckmann has a "multiyear history of difficulty in maintaining effective interpersonal relationships in both his personal and professional life." (*Id.* at 4.) The Board subsequently reactivated Dr. Beckmann's license. (Ex. A1 at 1.) Dr. Beckmann thereafter practiced podiatric medicine at various skilled nursing facilities and care homes in Oregon. (Ex. A6 at 2.)

8. On August 25, 2010, the Board ordered that Dr. Beckmann's podiatric medicine license be suspended for failure to pay child support. (Ex. A5.) On August 31, 2010, the Board received notification from the Oregon Department of Justice (DOJ) that the reasons for the suspension no longer existed. On September 2, 2010, the Board ordered that Dr. Beckmann's license be returned to active status. (Ex. A4.)

9. On January 24, 2013, the Board ordered that Dr. Beckmann's podiatric medicine license be suspended for failure to pay child support. (Ex. A3.) On February 4, 2013, the Board received notification from the DOJ that Dr. Beckmann was in compliance with his child support obligations. The Board consequently ordered that Dr. Beckmann's license be returned to active status. (Ex. A2.)

10. On April 10, 2013, Dr. Beckmann sent an email to "webmaster@unog.ch." (Ex. A14 at 4-5.) The email contained the following subject line: "7 years of being put through pain 18 hours per day in the US/Human Rights." (*Id.*) The text of the email stated, in part:[2]

> [I] am an inventor businessman and physician in the United States of America. * * *. Dr. Michelle Lynn Dunbar DPM[3] met up with a famous actress, Andrew Maddux an engineer from Iowa State University and General Dunbar in Wisconsin and made up so many different lies through utilization of the new version of the Haliburton Ear Implants that the US President Obama knows are being illegally implanted into people within the US. These implants used to look like rootbeer Barrels. The atrocities

[2] The email excerpts and FCC complaint from Dr. Beckmann that appear in these findings of facts are in their original form, with no corrections made for typographical errors, or with regard to proper grammar, punctuation, or spelling.

[3] Michelle Lynn Dunbar spent two years in the same podiatric residency program as Dr. Beckmann. (Test. of Dr. Beckmann.)

being inacted within the US are much worse than recently in Germany. It is to the point that they have areas set up on Grids within the telecommunications industry and from the National Guard bases to effect the vote and take away freedom of thought and right to privacy while claiming to protect. This is being done by them breaking into peoples houses with the Sheriff and implantation of a small needle like transmitting device that allows the own body to receive signals and put off signals within the inner ear as they did illegally in Iraq with KBR and Haliburton and my never met and estranged cousin Eric Barnhart.[4] The General, Eric Barnhart, Greg Lyons of San Andias, Dr. Gordon Denno of Scholl College an ex military advisor, Bill Gates, the Aniston and Obama family have all joined together with the FBI operatives to put these into people at the college level that are bright to be able to steal their ideas through the technology. * * *. The neural imaging is to a point as to allow reading of thought and in combination with sound it acts as small radio transmitters within citizens heads to be used to torture with stimulus of pain centers and sleep deprivation. * * *. President Obama and his staff have been notified of the torture to myself by these factions and has refused to reply as has the Oregon Senators, Oregon Representatives, The Portland and Salem FBI, the US Attorney General. They are so many now that they are able to activate them during simple phone calls to influence the decisions of others during their conversations revealing information from them personally about me that they could not know. They refuse to remove them from me, it causes pain constantly, causes ringing in my ears, and was all done during a second breakin in my Cleveland Ohio residency program under William Saar[5] and Vincent Hetherington. * * *. I have been used as an experiment because of my intelligence, without my permission or consent. * * *. I need help as do the American People because we do not deserve to be treated this way[.]

(*Id.*)

11. On April 11, 2013, Dr. Beckman sent an email to "webmaster@unog.ch," which stated, "They are torturing me with pain within my right ear again tonight." (Ex. A14 at 4.)

12. On April 12, 2013, Dr. Beckman sent an email to "webmaster@unog.ch," which stated, in part:

During the experimentation done upon me also involving the relatives of Michelle Achor DPM and involving Stoger Hospital in Chicago IL (near Rosalind Franklin University) while I was located in Keizer, OR. Their

[4] Eric Barnhart is Dr. Beckmann's cousin, whom Dr. Beckmann only met once, when they were children. (Test. of Dr. Beckmann.)

[5] Bill Saar Sr. was the program coordinator for the residency program that Dr. Beckmann attended. (Test. of Dr. Beckmann.)

> inner ear/ brain implant technology was used to give me the most excrutiating pain I have ever felt. I have had abdominal surgery before and know the pain of recovering from this surgery so I have a high pain tolerance. The procedure done at the hospital was cauterization of internal hemmoroids. Based on my medical knowledge it had to be done with General anesthesia and succinylcholine. The patient stays unconscious and immobile but can still feel some pain as some do not utilize local in the procedure. They, without my permission or ever even giving consent to having had the implants in my body, linked me to this person. I felt the cautery within my own rectum, fully clothed. * * *. This went on for a long time. * * *. I am asking for your help as they are also utilizing these within my 6 and 8 year old children. They have had night terrors. The four letters I wrote through the official White House website were ignored aside from increased pain and signals received one day after they were sent. There was a black stealth helicopter outside my house that gave a minimal pain signal as if I was whining or joking. Another tadpole shaped camoflaged helicopter hovered right over my car * * * after following me for two miles. I need some help and this country needs some insurrection[.]

(Ex. A14 at 3-4.)

13. On April 16, 2013, Dr. Beckman sent an email to "webmaster@unog.ch," which stated, in part:

> [I] do not date actresses and I am not a millionaire. * * *. I never dealt drugs and the people involved are still commiting the crimes against me and causing pain. President Obama needs to be investigated for the items I have discussed below, and I would like to be contacted.

(Ex. A14 at 3.)

14. On April 18, 2013, Dr. Beckman sent an email to "webmaster@unog.ch," which stated, in part:

> One of the individuals partially responsible for the violations is MICHELLE LYNN DUNBAR DPM[.] The woman has followed, stalked, harassed, and stolen from me with the illegal implants for years now. She is so stupid and bold as to be given a phone by which she can harass me by talking directly into my right ear with it when nowhere near. She does nothing other than to harass, and they will not investigate it here. Tonight they did the same thing from an SUV and from what I can tell it has to be a close signal to work. The glasses were tinted so I cannot tell if it was her or if she gave the item or information to do so to someone else[.]
> ///

(Ex. A14 at 3; capitalization in original.)

15. Also on April 18, 2013, Dr. Beckman sent an email to "support@barachobama.com," which stated, "I have been requesting help with this and not to be tortured for 7 years. Please see below." (Ex. A14 at 4.)

16. On June 19, 2013, Dr. Beckmann submitted a written complaint to the Federal Communications Commission (FCC). (Ex. A12 at 1-2.) The complaint stated, in part:

> I would like to make a large complaint concerning several individuals. My complaint concerns people illegally tracking me and seems not to be of your office. It concerns the fact that there have been illegal ear implants placed into my ears without legal reason and without my permission. There are three individuals directly involved: Andrew Maddux an Engineer of DesMoines IA worked for sprint, Eric Barnhart whom used to be of KBR who now works after Haliburton for a telecommunications company in SW Washington, and Jeremy Beckmann of central Iowa who has worked for Mcleod in the past. They utilize this system to be able to call my ear directly, the right one that is, also they seem to be utilizing this technology within the state of Oregon to track and record my statements almost to the point of my thoughts. I get criminally harassed and followed. I would appreciate your investigation and help as this concerns a William Saar and his Harassment as Well. I have requested help from the FBI, Oregon Senators, Oregon Representatives, and the White House site for discussion. I have proof and every time things are close being acted upon Michelle Lynn Dunbar DPM's name comes up and they try to stop the reprocussions due to her association with General Dunbar of Northwest Wisconsin. There have been several others to meet with Rocky Lyons Beaman[6] and follow me three of which are telecommunications pole workers and one is Tom Pepper. I need your help[.]

(*Id.* at 2.)

17. On June 20, 2013, Dr. Beckmann sent an email to Raymond Beckmann, his adoptive father, which stated:

> Raymond, By the way dumb niggerray, tell ed I told on his nigger bootcamp son in Colorado springs and your nigger ass got reported to the IRS, FTC, and SEC Ray, Im still licensed oh, a few others like your kimmy bitch got told on as well. just to let you know, so if you bring this to court Jay, Ill win!

[6] Rockie Lyons Beaman is Heather Beckmann's mother. (Ex. A14 at 1-2.)

(Ex. A14 at 1.) Dr. Beckmann copied Jay Beaman, Heather Beckmann's father, on the June 20, 2013 email. Dr. Beckmann also sent Mr. Beaman the entire string of emails previously cited in these findings of fact. (*Id.* at 1-5.)

18. Some time prior to July 11 or 12, 2013, the Board learned of Dr. Beckmann's FCC complaint. (*See* Ex. A6 at 2.) On July 11, 2013, the Board opened an investigation regarding Dr. Beckmann's fitness to practice podiatric medicine. (*Id.* at 1.)

19. Also on July 11, 2013, Mr. Beaman provided to Board Investigator Mei-Mei Wang copies of some of the emails he had previously received, or was copied on, from Dr. Beckmann. He informed Investigator Wang that he did not solicit any of the emails from Dr. Beckmann, and that he had not written any emails to Dr. Beckmann in at least a year. (Exs. A6 at 2, A14 at 1-5.)

20. On July 11 and 12, 2013, Investigator Wang spoke with Heather Beckmann via phone. Ms. Beckmann stated that she had long questioned whether Dr. Beckmann had a mental illness and/or a substance abuse issue. Ms. Beckmann also stated that Dr. Beckmann's recent behavior, emails, and conduct had become increasingly alarming. (Ex. A6 at 2.)

21. On July 16, 2013, Investigator Wang called Dr. Beckmann to inquire about the FCC complaint. Dr. Beckmann confirmed to Investigator Wang that he had filed the complaint. He then discussed certain family members and his ex-wife. He also talked about his beliefs that he has devices implanted in his body, that he is under surveillance, that his conversations and thoughts are monitored, and that certain persons want to steal his patent ideas.[7] (Ex. A6 at 2; test. of Wang.) Investigator Wang perceived much of his statements as "non-sensical and rambling." (Ex. A6 at 2.) Ms. Wang informed Dr. Beckmann that the Board wanted him to undergo a psychiatric evaluation. (*Id.*; test. of Wang.)

22. On July 25, 2013, psychiatrist Paul Conti, M.D., conducted a psychiatric evaluation of Dr. Beckmann. The evaluation consisted of a 90-minute interview, and Dr. Conti's review of the FCC complaint and various emails written by Dr. Beckmann. Dr. Conti subsequently prepared a written report based on the evaluation. (Ex. A7 at 1-6; test. of Dr. Conti.)

23. In his written report, Dr. Conti noted the following discussion with Dr. Beckmann regarding the FCC complaint:

> [In reference to his FCC complaint, Dr. Beckmann stated,] "There is nothing mentally ill about that." I pressed him about this, talking about the fact that it seems paranoid to me, and that it draws together a conspiracy of many different people from different phases of his life, who would be acting against him, and that he feels he is being followed and observed * * *. He again insisted that this is true, and expressed frustration that I could not see this and would instead attribute it to mental

[7] Dr. Beckmann has filed numerous patent applications with the U.S. Patent and Trademark Office. (*See* Ex. R2; test. of Dr. Beckmann.)

> illness. He told me that an MRI would show that he has transmission devices embedded in his second and eighth cranial nerves[.][8]

(Ex. A7 at 2.)

24. In his written report, Dr. Conti noted the following with respect to Dr. Beckmann's beliefs regarding his father (Raymond Beckmann), Ms. Dunbar, and other individuals:

> [Dr. Beckmann spoke of] his belief that his adoptive father has been doing things to sabotage his life. * * *. [H]e told me he had sent an email in which he threatened to kill his adoptive father. I asked him if he meant this and he said, "Yes and no." * * * I learned that he has no immediate plans to harm his adoptive father. He was adamant that he has never engaged in physical violence, and he does not think he would do this, but he does feel that violence could be justified, given the things that he believes are being done to him.[9]
>
> * * * * *
>
> [H]e believes that many people around him are trying to steal his patents and his practice for financial gain. * * *. He was particularly focused upon * * * Michelle Lynn Dunbar. He feels that this person was one of the primary thieves of his intellectual property, and that he has randomly seen her on several occasions, despite no knowledge of whether or not she lives in the same city that he lives in.
>
> * * * * *
>
> [H]e told me that he was sitting on a park bench one day, when he saw Michelle Lynn Dunbar walking toward him. He states she stopped 20 or 30 feet away and began speaking into a cell phone. He said he could see her lips moving, but she was transmitting the sound from the phone directly into his right ear. * * *. He also talked about a person named Bill Saar, whom he has not seen since 2007, but who he believes "tracking him." * * *. He believes that multiple people are receiving money from his patents, and this is the basic point of the email that he sent to the FCC, and it constitutes his basic belief system. * * *. He does believe that his ex-wife wants to harm him, although he was much less focused upon her than other people[.]
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> * * * * *

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[8] At hearing, Dr. Beckmann insisted that during the evaluation he told Dr. Conti only that he had an implant in his auditory nerve (*i.e.* the eighth cranial nerve), and not in his optic nerve (*i.e.* the second cranial nerve). (Test. of Dr. Beckmann.)

[9] At hearing, Dr. Beckmann clarified that his statement to Dr. Conti regarding his belief that violence could be justified was specific to his father. (Test. of Dr. Beckmann.)

> [H]e did express ideation to harm his adoptive father, but he has no intention or plan, and told me he feels he would never do this, although it could be justified if his adoptive father continues to damage his life[.]

(Ex. A7 at 1-3.)

25. In his written report, Dr. Conti noted that Dr. Beckmann denied experiencing any symptoms of mental illness:

> [Dr. Beckmann] denies any and all symptoms of affective, psychotic, or anxiety-related illness. * * *. He adamantly denied an inventory of psychotic symptoms, including auditory, visual, olfactory, and tactile hallucinations. He denied ideas of reference, thought insertion, and thought withdrawal.

(Ex. A7 at 2-3.) Dr. Conti further noted that Dr. Beckmann "continued to express surprise and frustration that I could think he could be mentally ill, specifically paranoid, or that I might think he was hearing voices when sound was being directly transmitted * * * into his nerves." (*Id.* at 2.)

26. In his written report, Dr. Conti provided, in part, the following assessment of Dr. Beckmann:

> [I] believe Dr. Beckmann is paranoid, and he is operating within a complex delusional system[10] that is characterized by a broad conspiracy against him by many people who have been in his life over the years. * * *. I note that his paranoid delusions are mostly non-bizarre, although they could be characterized as bizarre when he talks about implants in his optical nerve transmitting voices, and when he talks about implants transmitting not only voices, but perhaps his thoughts as well. * * *. I note that he does have some affect-driven associations, and he at times links perceived threatening entities through illogical mechanisms. * * *. [I] do believe he has experienced auditory hallucinations on two different occasions[.]

(Ex. A7 at 4-5.) In Dr. Conti's opinion, it is "medically implausible" that Dr. Beckmann has an implant such as Dr. Beckmann has alleged and described. (Test. of Dr. Conti.)

27. With respect to a diagnosis, Dr. Conti stated the following in his written report:

> At this point, I do not know what the underlying diagnosis is. There are a number of possibilities. One possibility is that he is suffering from a general medical condition * * * [such as] an intercranial mass, an

[10] A "complex delusional system" usually involves multiple, often unrelated, people and entities from different phases of a person's life. The affected person makes irrational links between the people and entities. The system is driven by paranoia and evolves over time. (Test. of Dr. Conti.)

> infectious etiology, or a toxin. * * *. [T]his could be [] late onset schizophrenia, although this would be atypical * * *. Another possibility is schizophrenia occurring after an extended prodromal period. There is a possibility of a neurobiological predisposition to schizophrenia, with the patient being pushed toward overt pathology and disease manifestation by the multiple stressors in his life * * *. Yet another possibility is cluster A personality traits, or a full cluster A personality disorder, that combined with stress has led to a brief psychotic episode. * * * * *.
>
> Overall, I would lean toward a diagnosis of schizophrenia, noting that I believe he meets criteria for either a schizophreniform disorder or for schizophrenia, depending upon the time course of illness. He has paranoid delusions which may be considered bizarre, he has auditory hallucinations, and he does have elements of thought disorder[.]

(Ex. A7 at 5-6.) Dr. Conti provided an Axis I diagnosis of psychosis, not otherwise specified, with the diagnostic considerations noted in his written report. As to Axis II, Dr. Conti noted possible cluster A personality traits or a cluster A personality disorder. (*Id.* at 6; test. of Dr. Conti.)

28. With respect to potential risks and concerns regarding Dr. Beckmann, Dr. Conti stated the following in his written report:

> [I] note that paranoia does not necessarily signify an inability to practice a learned set of skills, but it could certainly impact judgment. For example, [Dr. Beckmann's] judgment could be impaired if a patient resembles a person of whom he is paranoid, or a patient who was a police officer, FBI agent, etc. In addition, we do not know what illness we are dealing with, and if it may be progressive. Examples could include progression of a brain tumor, or the possibility that he is deeply into an as-yet prodromal phase of schizophrenia, and this condition will worsen. Given this set of facts, I believe there is too great a risk to the general public for him to practice without further evaluation. However, I am concerned about potential desperation if he is not allowed to work and receives no help. I believe this could lead to thoughts of harming himself or others who he believes are persecuting him. In fact, such a situation could further reinforce his beliefs of being persecuted. He is paranoid regarding many people, * * * [with] Ray Beckmann and Michelle Lynn Dunbar * * * foremost amongst these people. I do not believe that his current situation warrants warning or efforts to protect these people, but it could proceed to that point if he feels further persecuted. In this context, I recommend a brief diagnostic hospital stay[.]

(Ex. A7 at 5-6.) Dr. Conti recommends that Dr. Beckmann undergo further diagnostic testing, including an MRI of the brain and laboratory testing to check for infectious and metabolic problems. (Test. of Dr. Conti.)

29. On July 26, 2013, the Board offered Dr. Beckmann an Interim Stipulated Order to withdraw from practice. He declined to sign the Order. (Ex. A6 at 3; test. of Wang.)

30. Dr. Beckmann requested that administrators and nursing directors at various facilities where he has provided patient care send the Board letters with regard to his competency and treatment of patients. (Ex. A6 at 3; test. of Wang.) The Board received at least four such communications, three of which indicated that Dr. Beckmann had provided satisfactory care to patients. (Stipulation of Parties; *see also* Ex. A15.)

31. An email from Timberview Care Center to the Board dated July 29, 2013, stated in part:

> [Dr. Beckmann] started working with us a couple years ago. We have had mixed reviews from our patients. * * *. [W]e would get regular complaints from staff that he would "butcher" our residents[']toes. He did admit to having some occasional nicks, but would usually explain them away. Finally, one of our residents got so upset, she yelled at him in the hallway. Instead of remaining calm, he argued with her, which upset her more.
>
> * * * * *
>
> Finally, we told him we would only be using his services on the rare occasion we would be unable to get our residents out to a podiatrist. He has only been in our building once in the past 3 months and only saw one patient. We don't feel our residents get the best care from him.
>
> I wouldn't say he is "psychotic," but I would say he needs to work on his interpersonal skills and his boundaries. He came in on his personal time to ask one of my aid[e]s out on a date. This made her very uncomfortable. I had to ask him to leave. He just walked in and sat behind the nurses[']station. I found it to be very odd. After she told him she had a boyfriend, he continued to pursue her.
>
> On another occasion, he ran after my DNS [director of nursing services], who was living at the same apartment complex at the time, and asked him for a ride because he doesn't have a license. He was wearing very tight, short shorts and it made my DNS very uncomfortable. As [Dr. Beckmann] was rushing his car in the apartment complex, he slammed into a post and then fell on the hood of [the DNS's] car[.]
>
> [I] don't think he's a bad person, but he's definitely not a good podiatrist.

(Ex. A15 at 1.)

32. Dr. Beckman believes that in mid-June of 2007, Mr. Barnhart surreptitiously placed an implant into Dr. Beckmann's right ear. Dr. Beckmann believes that the implant allows people

to track him, hear what he is saying, and tell him things. Dr. Beckmann believes that the primary purpose of the implant is for people to hear him talk about his patent ideas, so that they can capitalize on the ideas themselves. Dr. Beckmann suspects that he may be under surveillance because, in his opinion, a lot of people know his whereabouts. Dr. Beckmann believes that on two occasions in the past seven years, Ms. Dunbar has spoken to him through his ear implant. Dr. Beckmann believes that Mr. Barnhart has implanted auditory devices into both of Dr. Beckmann's daughters. (Test. of Dr. Beckmann.)

33. Dr. Beckmann does not believe that he has any physical or mental conditions that could interfere with his ability to practice podiatric medicine. (Test. of Dr. Beckmann.) Dr. Conti believes that Dr. Beckmann's insight into his own mental health status is "poor." (Test. of Dr. Conti.)

34. Dr. Beckmann's behavioral symptomatology is progressive. With respect to his continued practice of podiatric medicine, the progressive nature of his symptoms is more worrisome to Dr. Conti than if, for example, Dr. Beckmann had symptoms that been stable for the past decade. Dr. Conti has opined that progression leading to worse pathology can cause further paranoia, and could ultimately lead Dr. Beckmann to conclude that violence that was not previously justified is now justified. In Dr. Conti's opinion, the evolution of Dr. Beckmann's pathology is "extremely worrisome" and there is a risk of violence. (Test. of Dr. Conti.)

35. At the hearing, when asked whether he ever got the impression that a patient might be "keeping tabs" on him, Dr. Beckmann answered in the negative and added, "I don't even concern myself with the people that I date and interact with until they give me some reason to think otherwise or threaten me in some way." (Test. of Dr. Beckmann.) Dr. Beckmann's response concerns Dr. Conti because "the idea behind a complex delusional system is that a person is making irrational links between people and finding reasons to be suspicious that are driven by the paranoia, as opposed to [being] driven by rational data collection." (Test. of Dr. Conti.) In Dr. Conti's opinion, Dr. Beckmann's delusional thought process could cause him to believe that a patient is part of the conspiracy against him. (*Id.*)

36. In Dr. Conti's opinion, Dr. Beckmann currently poses too great a risk to the public to practice podiatric medicine without further evaluation. (Test. of Dr. Conti.)

37. At the time of the hearing, Dr. Beckmann did not have a primary care physician, he was not under any physician's care, and he was not taking any medications. (Test. of Dr. Beckmann.) At the time of the hearing, he was 42 years old and residing at the Portland Rescue Mission. (Exs. A6 at 2, A7 at 1; test. of Dr. Beckmann.)

38. Dr. Conti is a board-certified psychiatrist. In 2001, he received his medical doctorate from Stanford University School of Medicine. He completed three years of a residency program at Stanford University Hospital and Clinics. He completed his fourth and final year of residency training at Harvard University School of Medicine (Harvard), where he was the chief resident of the acute inpatient psychiatry unit at Beth Israel Deaconess Medical Center. From 2005 to 2007, he was an instructor of psychiatry at Harvard. From 2007 to 2010, he was an attending physician in the inpatient psychiatry unit and outpatient psychiatry clinic at Providence St. Vincent

Medical Center. Since 2009, he has been a clinical adjunct professor at the Oregon Health & Science University, Department of Psychiatry. In 2010, he began a private clinical practice. Since 2012, he has been the outpatient medical director at the Hazelden Clinic in Beaverton, Oregon. In that capacity, he provides programmatic guidance regarding medication-assisted treatment services for substance use disorders, direct clinical care, business operations and management services, and community education. He also performs independent psychiatric evaluations on a regular basis. (Ex. A16 at 1-4; test. of Dr. Conti.)

CONCLUSION OF LAW

The ALJ recommended in her proposed order, and the Board agrees, that the Board's Order of Emergency Suspension should be upheld on the ground that Dr. Beckmann's continued practice of podiatric medicine would pose an immediate danger to the public.

OPINION

Under ORS 677.015, the Board is charged with regulating the practice of medicine to protect the health, safety, and welfare of the public.[11] ORS 677.205(3) allows the Board to temporarily suspend a license without a hearing "if the [B]oard finds that evidence in its possession indicates that a continuation in practice of the licensee constitutes an immediate danger to the public."

On August 1, 2013, the Board issued an Order of Emergency Suspension to Dr. Beckmann, ordering the immediate suspension of his license to practice as a podiatric physician, and ordering that he immediately cease the practice of podiatric medicine until otherwise ordered by the Board.

OAR 137-003-0560 governs the procedural aspects of emergency license suspensions and provides, in part:

> (1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license[.]
>
> * * * * *

[11] ORS 677.015 provides:

> Recognizing that to practice medicine is not a natural right of any person but is a privilege granted by legislative authority, it is necessary in the interests of the health, safety and welfare of the people of this state to provide for the granting of that privilege and the regulation of its use, to the end that the public is protected from the practice of medicine by unauthorized or unqualified persons and from unprofessional conduct by persons licensed to practice under this chapter.

(3) If the licensee files a timely request, the matter shall be referred to the Office of Administrative Hearings, [and] the hearing on an emergency suspension held[.]

* * * * *

(6) At the hearing regarding the emergency suspension order, the administrative law judge shall consider the facts and circumstances including, but not limited to:

(a) Whether the acts or omissions of the licensee pose a serious danger to the public health or safety; and

(b) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

(7) The administrative law judge shall issue a proposed order * * * [which] shall contain a recommendation whether the emergency suspension order should be confirmed, altered or revoked[.]

As the proponent of the position that Dr. Beckmann's continued practice of podiatry would pose an immediate danger to the public, the Board has the burden of coming forward with sufficient evidence to support its position. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"). If the Board meets its burden, then the burden shifts to Dr. Beckmann to present sufficient rebutting evidence. If he does so, then all credible evidence, and all reasonable and permissible inferences drawn from that evidence, are weighed to determine which propositions are more probably true than false. *See Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence); *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987) (proof by a preponderance of the evidence means the fact finder is persuaded the facts asserted are more likely than not true).

The Board's position is that Dr. Beckmann's continued practice of podiatric medicine would pose an immediate danger to the public because Dr. Beckmann is currently operating within a complex delusional system that is driven by paranoid beliefs, his symptoms have been progressively worsening, he lacks any insight into his mental health or the symptoms he experiences, the nature of his illness remains undiagnosed, he requires further diagnostic testing, and he is not currently under the care of any physician. To support its contentions, the Board relies primarily on the psychiatric evaluation and expert opinions of psychiatrist Dr. Conti.

Dr. Beckman denies that he has any mental or physical conditions that could negatively affect his ability to practice podiatric medicine. He argues that Dr. Conti's opinions are flawed because Dr. Conti lacks any knowledge, training, or experience with regard to the type of auditory implant Dr. Beckmann has in his body. Dr. Beckmann insists that he poses no danger to the public, and he asserts that he has never harmed, and would never harm, a patient.

Dr. Conti finds it "medically implausible" that Dr. Beckmann has the type of implant that Dr. Beckmann has alleged and described. Testimony of Dr. Conti. Dr. Conti's qualifications, as set forth in Exhibit A16, clearly establish him as an expert in the field of psychiatry. He is, therefore, qualified to assess Dr. Beckmann and render expert opinions with regard to Dr. Beckmann's mental health issues. The fact that Dr. Conti has no specific expertise relating to auditory implants, such as the type that Dr. Beckmann alleges to have in his body, does not make Dr. Conti unqualified to render an opinion as to the medical plausibility of such implants.

Dr. Beckmann insists that the alleged auditory implants exist, and that he and his two daughters have been subjected to them by his cousin, Mr. Barnhart. In support of the existence of such implants, Dr. Beckmann provided an internet article from a website called "examiner.com" and a listing of other websites pertaining to implants and associated technology. *See* Exhibit R1.

Dr. Beckmann's claims that Mr. Barnhart implanted an auditory device into Dr. Beckmann's body (as well as into the bodies of Dr. Beckmann's children) are not persuasive. Rather, the greater weight of the evidence establishes that Dr. Beckmann's beliefs regarding the implants and the conspiracies against him are fueled by paranoia and form the basis of a complex delusional system.

In Dr. Conti's expert opinion, Dr. Beckmann has poor insight into his mental health condition. This is supported by the record. During Dr. Conti's July 25, 2013 evaluation, Dr. Beckmann denied all symptoms of mental illness, and he expressed surprise and frustration that Dr. Conti would think that he was paranoid and mentally ill. At hearing, Dr. Beckmann's testimony demonstrated that he continues to believe that negative events in his life (*e.g.* this licensing matter, traffic violations[12]) are the result of conspiracies against him related to his patent ideas and child custody issues, and not due to any mental health condition.

Dr. Conti believes that the currently undiagnosed condition that is causing Dr. Beckmann's mental health symptoms is, most likely, progressive. This is supported by the fact that in 2008, Dr. Deitch observed no evidence of psychosis in Dr. Beckmann; in 2010, evaluator Maynard noted that Dr. Beckmann had difficulty in recognizing social cues and maintaining effective interpersonal relationships;[13] and in 2013, Dr. Conti observed that Dr. Beckmann had "readily evident" psychosis. Testimony of Dr. Conti; *see* Exhibits A8 at 4, A10 at 5-8, A7.

Dr. Conti believes that Dr. Beckmann's paranoia may impact his professional judgment, particularly if, for example, one of Dr. Beckmann's patients resembled someone of whom Dr.

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[12] For example, Dr. Beckmann testified that he gets more "attention" than is normal from police, and that he got pulled over for traffic violations four times within a four-day period by the same police officer in Keizer, Oregon. He went on to testify that his ex-wife and former employer have numerous police connections, and he insinuated that his traffic stops were related to those connections. (Test. of Dr. Beckmann.)

[13] Odd behavior and social dysfunction are common in the prodromal (*i.e.* precursory) phase of a psychotic illness. (Test. of Dr. Conti.)

Beckmann is paranoid. And, as Dr. Beckmann's condition and associated symptoms continue to progress, it is Dr. Conti's belief that the increased paranoia may lead Dr. Beckmann to conclude that violence is justified.[14] Dr. Conti finds the evolution of Dr. Beckmann's pathology "extremely worrisome." Testimony of Dr. Conti.

In Dr. Conti's expert opinion, Dr. Beckmann currently poses too great a risk to the public to practice podiatric medicine without further evaluation. Dr. Beckmann did not provide persuasive evidence to rebut that opinion, and Dr. Conti's opinion is supported by the record as a whole. The Board has therefore established, more likely than not, that Dr. Beckmann's continued practice of podiatric medicine would pose an immediate danger to the public.

The ALJ concluded in the Proposed Order, and the Board now concludes, that the Board's Emergency Order of Suspension is affirmed. *See* ORS 677.205(3); OAR 137-003-0560(6), (7).

FINAL ORDER

The Oregon Medical Board issues the following order:

As provided in the August 1, 2013 Order of Emergency Suspension, the license to practice podiatric medicine held by Brooke Robert Beckmann, D.P.M., is immediately suspended and he is ordered to immediately cease the practice of podiatric medicine until otherwise ordered by the Board.

DATED this 30th day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

[redacted] Signature Redacted

ROGER M. MCKIMMY, MD
Board Chair

APPEAL OF FINAL ORDER

[14] During the July 25, 2013 evaluation, Dr. Beckmann told Dr. Conti that he believed violence could be justified against his father, if his father continued to damage his life. (Ex. A7 at 1-3.)

You have the right to appeal this Final Order to the Oregon Court of Appeals, pursuant to ORS 183.482. To appeal, you must file a petition for review with the Oregon Court of Appeals within 60 days from the day the Final Order is served upon you. If the Final Order is personally delivered to you, the date of service is the date you receive the Final Order. If the Final Order is mailed to you, the date of service is the date it is *mailed*, not the date you receive it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

CERTIFICATE OF MAILING

On October 9, 2013, I mailed the foregoing FINAL ORDER regarding Brooke Robert Beckmann, DPM, to the following parties:

By: First Class and Certified Mail
Certified Mail Receipt #

Brooke Robert Beckmann, DPM
c/o Portland Rescue Mission
PO Box 3713
Portland, OR 97208-3713

E-mail Address: beckmannbrooke@yahoo.com

By: First Class Mail

Warren Foote
Senior Assistant Attorney General
Department of Justice
1162 Court St NE
Salem OR 97301

Jennifer Rackstraw
Office of Administrative Hearings
7995 SW Mohawk Street
Tualatin, OR 97062

Beverly Loder
Investigative Assistant

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of DAWN ELIZABETH BOST, MD LICENSE NO. MD16820	)))))	CORRECTIVE ACTION AGREEMENT

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Dawn Elizabeth Bost, MD (Licensee) is a licensed physician in the state of Oregon.

2.

2.1 The Board opened an investigation in May 2007 based upon credible information in regard to Licensee.

2.2 Pursuant to a Board order, Licensee underwent a physician assessment at UC San Diego Physician Assessment and Clinical Education (PACE) Program on June 29 – 30, 2011 and October 3 – 7, 2011. The PACE assessment report reflects that Licensee passed the assessment, with a minor recommendation that included the need for her to update her knowledge regarding current medical and screening guidelines.

2.3 On October 11, 2012, Licensee and the Board entered into a Stipulated Order which placed conditions on Licensee's medical license.

2.4 On June 19, 2013, Licensee obtained certification from the American Board of Internal Medicine.

2.5 On August 15, 2013, Licensee submitted a request to terminate the October 11, 2012, Stipulated Order and enter into a Corrective Action Agreement with modified conditions from the Stipulated Order.

///

3.

The Board agrees to terminate the October 11, 2012, Stipulated Order and enter into this Corrective Action Agreement. This Agreement is a public document, however, it is not a disciplinary action. This document is reportable to the National Data Bank.

4.

Licensee and the Board agree to the following terms and conditions

4.1 Licensee must not work more than a total of 40 hours per week. After six months of full compliance with the terms of this Agreement, and contingent on the endorsement of her supervising mentor, Licensee may submit a written request to modify this limitation.

4.2 Licensee must practice at a site pre-approved by the Board's Medical Director, under a supervising mentor that is pre-approved by the Board's Medical Director.

4.3 After six months of full compliance with the terms of this Agreement, Licensee may submit a written request to the Board, accompanied by an endorsement from the practice mentor(s), to modify the requirement that she practice under the supervision of a pre-approved mentor.

4.4 The October 11, 2012, Stipulated Order is terminated upon the approval of this Order by the Board.

4.5 Any violation of the terms of this Order constitutes grounds for immediate suspension and other disciplinary action under ORS 677.190(17).

5.

This Order becomes effective when it is signed by the Board Chair.

IT IS SO STIPULATED THIS 30 day of September 2013.

SIGNATURE REDACTED

DAWN ELIZABETH BOST, MD

IT IS SO ORDERED THIS 3rd day of October 2013.

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
SUNG JIN CHEON, LAc	)	ORDER TERMINATING
LICENSE NO. AC01102	)	CORRECTIVE ACTION AGREEMENT
	)	

1.

On January 13, 2011, Sung Jin Cheon, LAc, (Licensee) entered into a Corrective Action Agreement with the Oregon Medical Board (Board). This Agreement placed conditions on Licensee's Oregon license. On June 25, 2013, Licensee submitted documentation that he has successfully completed all terms of this Agreement and requested that this Agreement be terminated.

2.

The Board has reviewed the documentation submitted by Licensee and has determined that Licensee has successfully complied with all of the terms of this Agreement. The Board terminates the January 13, 201I, Corrective Action Agreement, effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of LORNE MAX CROSS, MD LICENSE NO. MD27400	)))))	INTERIM STIPULATED ORDER

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain healthcare providers, including physicians, in the state of Oregon. Lorne Max Cross, MD (Licensee) is a licensed physician in the state of Oregon.

2.

The Board received credible information regarding Licensee that resulted in the Board initiating an investigation. The results of the Board's investigation to date have raised concerns to the extent that the Board believes it necessary that Licensee agree to cease the practice of medicine until the investigation is completed.

3.

In order to address the concerns of the Board, Licensee and the Board agree to enter into this Interim Stipulated Order, which provides that Licensee shall comply with the following conditions effective the date this Order is signed by Licensee:

3.1 Licensee voluntarily withdraws from the practice of medicine and his license is placed in Inactive status pending the completion of the Board's investigation into his ability to safely and competently practice medicine.

3.2 Licensee understands that violating any term of this Order will be grounds for disciplinary action under ORS 677.190(17).

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4.

At the conclusion of the Board's investigation, Licensee's status will be reviewed in an expeditious manner. Following that review, if the Board determines that Licensee shall not be permitted to return to the practice of medicine, Licensee may request a hearing to contest that decision.

5.

This Order is issued by the Board pursuant to ORS 677.265(1) and (2) for the purpose of protecting the public, and making a complete investigation in order to fully inform itself with respect to the performance or conduct of the Licensee and Licensee's ability to safely and competently practice medicine. Pursuant to ORS 677.425, Board investigative materials are confidential and shall not be subject to public disclosure. However, as a stipulation this Order is a public document and is reportable to the national Data Bank and the Federation of State Medical Boards.

6.

This Order becomes effective the date it is signed by the Licensee.

IT IS SO STIPULATED THIS 4th day of October, 2013.

SIGNATURE REDACTED

LORNE MAX CROSS, MD

IT IS SO ORDERED THIS 4th day of October, 2013.

State of Oregon
OREGON MEDICAL BOARD

SIGNATURE REDACTED

JOSEPH THALER, MD
MEDICAL DIRECTOR

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
JACKSON TYLER DEMPSEY, MD	)	STIPULATED ORDER
LICENSE NO. MD15946	)	
	)	

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Jackson Tyler Dempsey, MD (Licensee) holds an active license to practice medicine in the state of Oregon.

2.

On August 6, 2013, the Board issued a Complaint and Notice of Proposed Disciplinary Action in which the Board proposed taking disciplinary action by imposing up to the maximum range of potential sanctions identified in ORS 677.205(2), by imposing up to the maximum range of potential sanctions identified in ORS 677.205(2), to include the revocation of license, a $10,000 fine, and assessment of costs, pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined by ORS 677.188(4)(a).

3.

Licensee is a psychiatrist, and was formerly employed at the Jackson County Mental Health Department. Licensee's acts and conduct that violated the Medical Practice Act are:

3.1 Licensee was arrested on July 22, 2012, for misdemeanor charges of Assault IV, Criminal Mischief III, and Disorderly Conduct II, after Licensee admitted to a Federal Forest Service Ranger that he had strung nylon cord across public trails in the Mt. Ashland watershed area, strewn U-shaped fencing nails onto the trails, and placed vegetation and deadfall onto the

trails to obstruct public use of the trails. Licensee placed the nylon cords across the trails, which caused mountain bikers to strike the cords while riding on the trails. Licensee placed these obstructions on the trails over the course of about 6 weeks during the summer of 2012. As a result of his conduct, three mountain bikers reportedly sustained injuries while riding their bikes on a public trail in the Ashland watershed area by hitting a nylon cord or vegetation and deadfall that Licensee placed on or across the trails. On August 20, 2012, Licensee was charged with misdemeanors of one count of Assault in the 4th degree and three counts of Recklessly Endangering Another Person by the Jackson County District Attorney's Office. On May 1, 2013, Licensee pleaded no contest to Assault in the 4th degree, and to two counts of Recklessly Endangering Another Person. Licensee was sentenced to 30 days in jail, mandated to pay $2,400 in restitution, and ordered to stay off the trail system in the Mt. Ashland watershed for two years while he is on bench probation. The court granted Licensee's petition to serve his jail sentence as 30-days of house arrest.

3.2 The Principles of Medical Ethics promulgated by the American Medical Association state in part: "A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health." Licensee's conduct for which he was convicted was detrimental to the community, endangered the health and safety of the public, and caused injury to several persons using mountain bikes on the public trails where he placed obstructing nylon cords, fencing nails, vegetation, and deadfall. Licensee's conduct was both unprofessional and dishonorable.

4.

Licensee and the Board desire to settle this matter by entry of this Stipulated Order. Licensee understands that he has the right to a contested case hearing under the Administrative Procedures Act (chapter 183), Oregon Revised Statutes. Licensee fully and finally waives the right to a contested case hearing and any appeal therefrom by the signing of and entry of this Order in the Board's records. Licensee admits that he engaged in conduct that violated ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined by ORS 677.188(4)(a).

Licensee understands that this Order is a public record and is a disciplinary action that is reportable to the National Data Bank and the Federation of State Medical Boards.

4.

Licensee and the Board agree to resolve this matter by the entry of this Stipulated Order subject to the following sanctions and terms:

4.1 Licensee is reprimanded.

4.2 Licensee must be followed by a licensed health care provider (pre-approved by the Board's Medical Director) who will provide quarterly written reports to the Board.

4.3 Licensee stipulates and agrees that this Order becomes effective the date it is signed by the Board Chair.

4.4 Licensee must obey all federal and Oregon state laws and regulations pertaining to the practice of medicine.

4.5 Licensee stipulates and agrees that any violation of the terms of this Order shall be grounds for further disciplinary action under ORS 677.190(17).

IT IS SO STIPULATED THIS 4 day of September, 2013.

SIGNATURES REDACTED

JACKSON TYLER DEMPSEY, MD

IT IS SO ORDERED THIS 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURES REDACTED

ROGER MCKIMMY, MD
BOARD CHAIR

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
CLYDE ALAN FARRIS, MD LICENSE NO. MD11437	)	ORDER TERMINATING CORRECTIVE ACTION AGREEMENT
	)	

1.

On October 11, 2012, Clyde Alan Farris, MD (Licensee) entered into a Corrective Action Agreement with the Oregon Medical Board (Board). This Agreement placed conditions on Licensee's Oregon license. On July 8, 2013, Licensee submitted documentation that he has successfully completed all terms of this Agreement and requested that this Agreement be terminated.

2.

The Board has reviewed the documentation submitted by Licensee and has determined that Licensee has successfully complied with all of the terms of this Agreement. The Board terminates the October 11, 2012, Corrective Action Agreement, effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
PAUL STEVEN IMPERIA, MD	)	ORDER TERMINATING
LICENSE NO. MD17163	)	STIPULATED ORDER
	)	

1.

On August 5, 2010, Paul Steven Imperia, MD (Licensee) entered into a Stipulated Order with the Oregon Medical Board (Board). This Order placed conditions on Licensee's Oregon medical license. On August 21, 2013, Licensee submitted a written request to terminate this Order.

2.

Having fully considered Licensee's request and his successful compliance with the terms of this Order, the Board terminates the August 5, 2010, Stipulated Order, effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
WALLACE LAI, MD	)	ORDER MODIFYING
LICENSE NO. MD17813	)	STIPULATED ORDER
	)	

1.

On January 14, 2010, Wallace Lai, MD (Licensee) entered into a Stipulated Order with the Oregon Medical Board (Board). This Order placed conditions on Licensee's Oregon medical license. On August 5, 2013, Licensee submitted a written request to modify this Order.

2.

Having fully considered Licensee's request and his successful compliance with the terms of this Order, the Board terminates terms 5.3 and 5.5 of the January 14, 2010, Stipulated Order, effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
CARMA JANE LEE, MD	)	ORDER TERMINATING
LICENSE NO. MD21672	)	STIPULATED ORDER
	)	

1.

On October 6, 2011, Carma Jane Lee, MD (Licensee) entered into a Stipulated Order with the Oregon Medical Board (Board). This Order placed conditions on Licensee's Oregon medical license. The Board modified this Order on October 11, 2012. On July 23, 2013, Licensee submitted a written request to terminate this Order.

2.

Having fully considered Licensee's request and her successful compliance with the terms of this Order, the Board terminates the October 6, 2011, Stipulated Order, effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE
OREGON MEDICAL BOARD
STATE OF OREGON

IN THE MATTER OF:	)	
	)	
JOSEPH MOZENA, DPM	)	FINAL ORDER
License No. DP00154	)	
	)	

HISTORY OF THE CASE

On November 5, 2012, the Oregon Medical Board (Board) issued a Notice of Intent to Deny License Application (notice) to Joseph Mozena, DPM, proposing to deny Dr. Mozena's application for a license to practice as a podiatric physician[1] in Oregon. The notice also proposed to assess the costs of the proceedings against Dr. Mozena. On November 14, 2012, Dr. Mozena requested an administrative hearing.

On December 6, 2012, the Board referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Richard D. Barber to preside over the matter. By letter dated January 29, 2013, the Board requested a change of administrative law judge, pursuant to OAR 471-060-0005(3). On February 1, 2013, the OAH granted the request. The OAH subsequently assigned Senior ALJ Jennifer H. Rackstraw to preside over the case.

On February 11, 2013, ALJ Rackstraw convened a prehearing conference via telephone. Senior Assistant Attorney General Warren Foote represented the Board. Attorney Andrea D. Coit represented Dr. Mozena.

A hearing was held on April 24, 2013, at the Board's office in Portland, Oregon. Mr. Foote represented the Board. Ms. Coit represented Dr. Mozena. The following witnesses testified for the Board: Dr. Mozena; Scott Reichlin, M.D., psychiatrist; and Eric Brown, chief investigator for the Board. Dr. Mozena also testified on his own behalf. In addition, Peter Mozena, Dr. Mozena's brother, testified for Dr. Mozena. Also present at the hearing were Dennis Dalton, protection specialist; and Mary Jacks, court reporter. The record remained open, and on May 1, 2013, the parties submitted written closing arguments. On May 6, 2013, the OAH received a written transcript of the hearing. The hearing record closed on that date.

The ALJ issued a Proposed Order on July 5, 2013. Dr.Mozena filed no exceptions.

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[1] A podiatric physician treats "ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle." ORS 677.010(14).

ISSUES

1. Whether the Board may deny Dr. Mozena's application for a license to practice as a podiatric physician in Oregon based on unprofessional or dishonorable conduct. ORS 677.190(1)(a), 677.188(4)(a).

2. Whether the Board may deny Dr. Mozena's application for a license to practice as a podiatric physician in Oregon based on impairment. ORS 677.190(7), 676.303(1)(b).

3. Whether the Board may assess the costs of the proceeding against Dr. Mozena. ORS 677.265(2).

EVIDENTIARY RULINGS

The Board offered Exhibits A1 through A5. Dr. Mozena offered Exhibits R1 through R52. All exhibits were admitted into the record without objection. In addition, the Board's Pleadings P1 through P11 were made a part of the record.

FINDINGS OF FACT

1. In 1983, Dr. Mozena received a degree in podiatric medicine from the California College of Podiatric Medicine. In 1984, he completed a residency in podiatric medicine and surgery. From 1985 to 1987, he was a private practitioner of podiatric medicine and surgery in California. (Exs. R1, A2 at 2-6, A4 at 12; test. of Dr. Mozena.)

2. For approximately three weeks (in two separate time periods) in 1986, and for two weeks in 1987, Dr. Mozena was hospitalized in California for mental health issues, including suicidal ideation. (Ex. A5 at 4, 6.)

3. In 1987, Dr. Mozena moved to Oregon and began assisting his brother, John Mozena, a practicing podiatrist in Oregon, with surgery.[2] In approximately 1988, Dr. Mozena started practicing podiatric medicine and surgery in Portland. (Exs. R1, A4 at 12, A5 at 4; test. of Dr. Mozena.) In 1997, he decided to stop practicing because it was too "stressful and difficult for him."[3] At the time, he did not intend to ever practice podiatry again. (Test. of Dr. Mozena.) From April 13 to May 3, 1997, he was hospitalized at Providence Portland Medical Center (Providence Portland) and diagnosed with Major Depression with psychotic features. (Ex. A5 at 6.) He has not practiced podiatric medicine since 1997. (Test. of Dr. Mozena; Ex. A2 at 3.)

4. From 1998 to 2001, Dr. Mozena performed property maintenance for his mother and stepfather. (Test. of Dr. Mozena; Exs. R1, A2 at 5.) In the meantime, Dr. Mozena's Oregon

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[2] At the time of the hearing, John Mozena continued to practice podiatric medicine in Oregon. (Test. of Dr. Mozena.)

[3] During a Board-ordered mental health evaluation on May 31, 2012, Dr. Mozena told the evaluator that he had become obsessive about being perfect in his practice, that he would cry at night, and that he came closer to attempting suicide in 1997 than at any other time in his life. (Ex. A5 at 4.)

podiatric medicine license lapsed. (Ex. A5 at 4; *see* Ex. A1 at 1.) From July 6 to August 21, 1998, he was hospitalized at Providence Portland and diagnosed with Major Depression with psychotic features. (Ex. A5 at 6.)

5. On May 18, 2000, Dr. Mozena submitted an application to reactivate his Oregon podiatric license. On the application, Dr. Mozena indicated that he had not completed the mandatory 50 hours of continuing medical education and that he had not practiced for more than one year because of "personal problems, emotional and mental." (Ex. A1 at 1.) On March 28, 2001, Dr. Mozena was scheduled to appear before the Board to explain his year-long absence from practice. However, he was unable to appear on that date because he was hospitalized. (*Id.*, Ex. A5 at 6.)

6. On March 23, 2001, Dr. Mozena was admitted to Portland Adventist Hospital (after being initially evaluated at Providence Portland). He was hospitalized from March 23 to 28, 2001. He was then readmitted from March 29 to April 25, 2001. Both hospital admissions were initiated on an involuntary basis using a hospital hold,[4] and he was civilly committed on the second admission.[5] He had stopped taking his psychiatric medications and he presented with religious delusions, agitation, suicidal thoughts, confusion, disorganization of thought, and ideas of reference and persecution. He was determined to lack capacity regarding psychotropic medications and he was reluctant to take them. He was diagnosed with Psychotic Disorder NOS (not otherwise specified). After being treated with the medication Olanzapine, he improved. (Ex. A5 at 9- 10.)

7. On October 19, 2001, the Board ordered that Dr. Mozena undergo an evaluation to determine his ability to safely and competently practice podiatric medicine. On or about December 20 and 21, 2001, psychiatrist Mary McCarthy evaluated Dr. Mozena. She diagnosed him with Schizoaffective Disorder, and recommended that he not practice podiatry and instead find a less stressful job. (Ex. A5 at 4, 9.) Based on the evaluation, the Board had "serious concerns" with regard to Dr. Mozena's practice abilities. (Ex. A1 at 1-2.) In a Stipulated Order dated April 18, 2002, Dr. Mozena surrendered his license in lieu of further Board investigation. (*Id.* at 1-3.)

8. In 2001, and continuing until September 2002, Dr. Mozena received mental health treatment through Cascadia Behavioral Healthcare. He was diagnosed with Schizoaffective Disorder and treated with the medication Zyprexa. Treatment notes indicate that Dr. Mozena was not functioning well at that time, that he had little social contact, that he had poor insight, that he took his medications inconsistently, and that he had expressed suspicions that the medications made him mentally ill. (Ex. A5 at 10.)

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[4] A hospital hold is the first stage of the civil commitment process, and it requires that a person be demonstrably mentally ill and a danger to self or others . (Test. of Reichlin.)

[5] Peter Mozena testified at hearing that the Mozena family took steps to get Dr. Mozena civilly committed because they believed it was the only way Dr. Mozena would receive the treatment he needed at that time. (Test. of P. Mozena.)

9. In July 2002, Dr. Mozena was hospitalized at the Veteran's Administration (VA) Hospital in Portland. He received several provisional diagnoses at that time, including Paranoid Schizophrenia, Mania, and Psychotic Depression. In approximately September 2002, Dr. Mozena began treating with VA psychiatrist Erick H. Turner, MD. Dr. Turner's primary role with Dr. Mozena has been as a medication prescriber. Dr. Turner's focus has been on treating Dr. Mozena's depression. (Ex. A5 at 5, 6, 10.)

10. Initially, Dr. Mozena saw Dr. Turner every two weeks. Those visits subsequently tapered off to between two and four times per year. The visits have generally consisted of Dr. Mozena completing a "bipolar scale" so that Dr. Turner can assess whether Dr. Mozena is, for example, depressed or elated. (Test. of Dr. Mozena.) Then the visit focuses on the medication(s) Dr. Mozena is taking and whether he is experiencing any complications from the medication. (*Id.*; test. of Reichlin.) As of July 2012, Dr. Turner was prescribing 100 milligrams (mg) of Sertraline once per day and 40 mg of Ziprasidone twice per day for Dr. Mozena. (Ex. A5 at 5, 6, 10.) At the time of the hearing, Dr. Mozena was taking only Ziprasidone and seeing Dr. Turner approximately every six months. (Test. of Dr. Mozena; *see* Ex. R48 at 1.) If Dr. Mozena were to stop taking this medication, or if he changed the dose, for more than a few days, he would be at risk for a manic or psychotic episode. (Test. of Reichlin.)

11. In 2003, Dr. Mozena began performing work at the VA hospital in Portland. That year, he also became certified in pedorthics. From 2003 to 2004, he performed vocational rehabilitation in pedorthics at the VA. From 2004 to 2008, he was a contracting pedorthist at the VA. On June 8, 2008, the VA hired him as a full-time pedorthist. (Exs. R1, R2, A2 at 5, A5 at 4.) His primary duties as a pedorthist at the VA included making orthotics and dispensing custom shoes.[6] He also did "history and physicals" on patients, as well as padding, orthodigita, and taping. (Test. of Dr. Mozena.) While working at the VA, he developed a passion for preventing amputation in diabetic patients. (*Id.*)

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[6] The VA referred to Dr. Mozena as a "pedorthotist." (Test. of Dr. Mozena.) In an April 2013 job posting, the VA described the duties of an orthotist/fitter as follows:

> The Orthotist (Fitter) will be responsible for the design, fabrication, and fitting of orthotic/prosthetic devices for common disability levels. These are achieved through consultation with physician, caregiver, therapist and/or senior Orthotist/Prosthetist staff members, which enables incumbent to become proficient in essential occupational tasks and understand the prescription for orthotic and prosthetic devices for the more common disability levels. Communicates with the patient to explain the procedure, solicit cooperation and reduce anxiety. The incumbent will prepare molds and/or tracings to be used in the fabrication of the device. Assemble components to create a finished device. Performs preliminary alignment and fitting of the device. Incumbent will attend professional and manufacturer's training seminars to expand knowledge, maintain competency and become familiar with new techniques and emerging technologies.

(Ex. R5 at 1-2.)

12. Dr. Mozena stopped taking his psychiatric medications in December 2008. (Ex. A5 at 11.) From April 15 to 18, 2009, he was hospitalized at the VA hospital in Seattle, Washington. (*Id.* at 6.) He was involuntarily committed. At the time, he was suicidal, he appeared agitated, and he required seclusion for some period of time. (*Id.* at 11.) He described that hospitalization during a May 31, 2012 mental health evaluation as follows:

> I checked into psych because I was getting sick . . . thought it was a heart attack. Went to ER, they didn't do anything, I walked around the hospital, wanted to come in and they admitted me. Then I checked out a few days later. [In response to the question: In what way sick?] Sick . . . not only chest pain but really sick at the time. Stress . . . I thought I checked myself in, problems, walking halls, not knowing what to do, crying.[7]

(*Id.* at 6.)

13. In 2009 and 2010, Dr. Mozena was admitted to emergency rooms in Florida, Washington (Harrison Medical Center and VA – Puget Sound), and Oregon (Legacy Emanuel and Providence Portland). (Test. of Dr. Mozena; Ex. A2 at 4.) He was, for example, hospitalized from July 4 to August 3, 2009.[8] In approximately September 2009, he once again stopped taking his psychiatric medications. (Ex. A5 at 11.)

14. Dr. Mozena testified at hearing that he went to the Legacy Emanuel emergency room because he was having "heart trouble" and "chest pain." (Test. of Dr. Mozena.) He testified that he went to the emergency room at Providence Portland for abdominal pain and possibly for "some mental health issues." (*Id.*) He testified that he went to the emergency room at the VA hospital in Puget Sound because of "chest pain." (*Id.*) Dr. Mozena does not have any known heart condition. (*Id.*)

15. In approximately 2010, Dr. Mozena went to Tallahassee, Florida to visit his then-fiancée. The visit did not go well, and Dr. Mozena ultimately ended up in an emergency room. (Test. of Mozena.) At hearing, he gave the following explanation for that hospital visit:

> [I] had no place to go, so I wound up in the emergency room.
>
> * * * * *
>
> I had no money, and so I thought I'd go to the emergency room and ask for some help. So then they said no. And so I walked and sat at the Catholic church and talked to the priest to see if he could help me and he said no. And so I just walked to the airport and called my stepfather and he flew me home.

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[7] The evaluator noted that, "After this explanation [Dr. Mozena] denied to me that he was suicidal or psychotic at the time." (Ex. A5 at 6.)

[8] The record does not establish where this hospitalization occurred.

(*Id.*) At hearing, Dr. Mozena denied that he visited the emergency room in Tallahassee because of any emergent health condition he was experiencing at the time. (*Id.*)

16. In January 2010, at the direction of Dr. Turner, Dr. Mozena began seeing "talk" therapist Charley Urlwyler. (Test. of Dr. Mozena; Ex. A5 at 11.) At the time of the hearing, Dr. Mozena was seeing Mr. Urlwyler every six months or so. (Test. of Dr. Mozena.)

17. On June 7, 2010, the VA terminated Dr. Mozena's employment. (Test. of Mozena; *see* Exs. R2 at 1, A5 at 4.) At hearing, Dr. Mozena gave the following explanation for why he stopped working at the VA:

> [I] was getting physically sick. I was going to the hospital and they were giving me sick leave, and my supervisor said that I had so many sick days that she wanted a doctor's excuse to go back to work. So my physician wrote me an excuse to go back to work but then said I had to have a psychiatric evaluation to go back to work. Then my psychiatrist wrote a letter and said it might be embarrassing if I prayed in front of a patient and so my supervisor said we can't have that, so she let me go.

(Test. of Dr. Mozena.)

18. Dr. Mozena was ultimately issued a citation and required to pay $75 after he refused to leave the VA premises after his termination. (Test. of Mozena; Ex. A2 at 3.) At hearing, Dr. Mozena gave the following explanation of those events:

> [I] went in. I was very ill at the time, and I thought I wanted the doctors to respect Jesus. I was very confused and they asked me to leave. I said, "NO." And so they put me in a cell in the VA and said, "Are you ready to go now?" And I said, "Yes."
>
> * * * * *
>
> [I] was just confused, you know, as part of my mental illness. I realize that I can get things pretty mixed up.

(Test. of Dr. Mozena.)

19. Bipolar disorder primarily affects the emotions. A person with bipolar disorder who experiences a manic episode is in a state of emotional upheaval. The upheaval typically involves either elation or irritability, with irritability being more common. A person's judgment is profoundly affected during a manic episode, and the person may become easily aroused emotionally. (Test. of Reichlin.)

20. Dr. Mozena's bipolar disorder has psychotic features, which in his case are typically expressed by significant paranoia and hyperreligious conceptualizations. His manic episodes have resulted in at least eight hospitalizations. Given the length of Dr. Mozena's illness, Dr.

Reichlin considers Dr. Mozena's manic episodes to be "fairly" infrequent. (Test. of Reichlin.) When Dr. Mozena experiences a mental health crisis, he typically becomes depressed, withdrawn, and reclusive. (Test. of P. Mozena.)

21. Dr. Mozena has stopped taking his psychiatric medications, or changed the dosage of his medication, without discussing those actions with his treating psychiatrist at least four times. (*See* Ex. A5 at 9-11; test. of Reichlin, Dr. Mozena.) Stopping his medication or altering the dosage has a direct effect on Dr. Mozena's mental health stability because Dr. Mozena requires medication to remain free of his psychotic symptoms. Taking such significant actions, without consulting his treating psychiatrist, is indicative of Dr. Mozena's lack of insight into his mental illness. (Test. of Reichlin.)

22. Because he has a serious mental illness, it is important that Dr. Mozena maintain an understanding of his emotional life and the way his emotions change from moment to moment, and day to day. It is important that he understand what kinds of things cause him problems and what can be done about those problems. To date, Dr. Mozena has shown very limited ability in this regard, and Dr. Reichlin opines that this fact makes Dr. Mozena "unreliable." (Test. of Reichlin.) Frequent psychotherapy that explores Dr. Mozena's emotional life, his emotional changes, and the things that have proven problematic to his emotional state would be beneficial to him if he were able and willing to fully engage in such treatment.[9] (*Id.*)

23. Working at the VA gave Dr. Mozena the confidence to seek his podiatric medicine license. He would like to work primarily as a pedorthist, but he wants his podiatric medicine license because he believes having "Dr." in front of his name will result in his patients placing greater trust in his care and opinions.[10] (Test. of Mozena.) If he obtains his license, he will seek the assistance of a VA employment specialist to find work. He hopes to work 40 hours per week. (*Id.*)

24. On May 19, 2011, Dr. Mozena submitted to the Board an application to practice podiatric medicine in Oregon. (Ex. A2.) On November 23, 2011, the Board ordered that Dr. Mozena submit to a comprehensive evaluation to determine his ability to safely and competently practice podiatric medicine. (Ex. A3.)

25. On February 29 and March 1, 2012, Dr. Mozena underwent an evaluation by the Center for Personalized Education for Physicians (CPEP), an independent reviewing organization that evaluates medical competence and knowledge. (Ex. A4; test. of Brown.) The evaluation included three clinical interviews by board-certified podiatrists, three simulated patient encounters, and a simulated patient documentation exercise. (Ex. A4 at 5.) The resulting CPEP Assessment Report stated, in part:

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[9] At hearing, Dr. Reichlin expressed doubt that Dr. Mozena has the ability to fully engage in such treatment. (Test. of Reichlin.)

[10] At hearing, Dr. Mozena testified that if he obtains his podiatric license, he would also like to clip nails for his patients. (Test. of Dr. Mozena.)

> Dr. Mozena demonstrated a broad knowledge base of podiatric medicine that was superficial in several areas and out of date in others. His clinical judgment and reasoning were inadequate. Dr. Mozena's communication skills were marginally adequate with need for improvement with simulated patients (SPs), and adequate with peers. His documentation for the SP encounters was poor.

(*Id.* at 2.)

26. CPEP made the following "Assessment Findings" with regard to Dr. Mozena's medical knowledge:

> Dr. Mozena did well in some areas of podiatric medicine. During discussion of a woman with a progressively painful toe joint, he was able to identify the diagnosis as a non-healing stress fracture, as well as suggest a reasonable management plan. During a discussion of a child with an infected ingrown toenail, Dr. Mozena explained appropriate initial management options. In addition, his described physical exam of the foot was adequate. When asked to interpret X-ray images during the interviews, Dr. Mozena demonstrated acceptable ability.
>
> However, Dr. Mozena's conveyed knowledge was inadequate in several areas. For example, he was not accurate regarding the signs and symptoms of plantar fasciitis[,] nor was he able to discuss current treatment options. Dr. Mozena did not demonstrate thorough knowledge of management for patients with paresthesias. Dr. Mozena did not demonstrate the ability to adequately interpret lab findings when presented with a hypothetical patient with multiple lab abnormalities. Additionally, he was not current regarding the indications for imaging modalities. He did not provide an appropriate discussion regarding the care of a patient with a diabetic foot infection.
>
> Dr. Mozena was also out of date in the area of pharmacology. * * *. He was not aware of antibiotic options for diabetic foot infection treatment[.]
>
> Some of the medical knowledge needs identified by the consultants also had implications related to clinical judgment[.]

(Ex. A4 at 5-6.)

27. CPEP made the following "Assessment Findings" with regard to Dr. Mozena's clinical judgment and reasoning:

> [D]r. Mozena demonstrated clinical judgment and reasoning that was inadequate. This may be due to an overlap regarding the above described knowledge deficits[.]
> ///

> Dr. Mozena demonstrated variable clinical judgment and reasoning in certain areas. * * *. While he did recognize his limitations and appropriately considered use of consultants, he did so in areas of expected knowledge for the practicing podiatrist. * * *. He displayed variable judgment regarding his information gathering skills. * * * [For example,] when discussing bunions, important information was omitted during Dr. Mozena's data acquisition.
>
> The consultants opined that Dr. Mozena required significant prompting to allow him to provide adequate responses to scenarios. This could be due to his time out of practice. He lacked the ability to appropriately formulate structured differential diagnosis. In addition, he was not able to adequately recognize the acuity of an illness and develop appropriate plans. For example, he did not recognize the patient discussed above with a diabetic foot infection was seriously ill and required hospitalization[.]

(Ex. A4 at 7.)

28. CPEP recommended that Dr. Mozena undergo a comprehensive health evaluation with a psychiatrist experienced in dealing with healthcare providers. The purpose of such an evaluation would be to determine his readiness to return to practice and to appropriately monitor any conditions that might affect his ability to practice or remediate his deficits. (*Id.*)

29. CPEP made the following educational recommendations:

> Dr. Mozena demonstrated a significant number of educational needs[,] particularly in the inpatient and surgical settings. It is CPEP's opinion that an attempt at supervised remedial education would be appropriate within the limited scope of an outpatient setting. However, it is CPEP's opinion that Dr. Mozena requires retraining in a post graduate program were he to pursue inpatient and/or surgical podiatry. * * *.
>
> The following educational recommendations provide the foundation for the Educational Intervention in the outpatient setting. * * *.
>
> • Point of Care (PoC) Experience: Dr. Mozena should participate in a clinical experience to provide the necessary support and supervision required as he addresses the areas of demonstrated need:
>
> - In the outpatient setting, Dr. Mozena should *initially* precept all patients with an onsite preceptor, prior to directing the disposition of the patient (prior to treatment, transfer, or discharge) to discuss data collection, diagnostic considerations and conclusions, and management:
>   - For outpatient procedures, Dr. Mozena should initially have direct supervision.

///

- Educational Preceptor: Dr. Mozena should establish a relationship with an experienced educational preceptor in podiatry. This involves regularly scheduled meetings to review cases and documentation, discuss decisions related to those cases, review specific topics, and make plans for future learning. The preceptor serves as an educator and is not intended to function as a practice monitor.

- Continuing Education and Self-Study: Dr. Mozena should engage in course and self-study which include, but are not limited to, the topics indicated in areas of demonstrated need:
  - Complete a comprehensive course review in podiatry, including pharmacology and imaging, prior to beginning direct patient care activities.

- Documentation course.

- Communications coaching from a preceptor or communication professional.

(Ex. A4 at 2-3; emphasis in original.)

30. On May 31, 2012, forensic psychiatrist Scott Reichlin, MD, evaluated Dr. Mozena at the Board's request. The evaluation consisted of a four-hour interview with Dr. Mozena, a review of treatment records and other documentation,[11] and telephone conferences with Dr. Turner and Mr. Urlwyler. (Ex. A5; test. of Reichlin.)

31. In a telephone conference on July 5, 2012, Dr. Turner informed Dr. Reichlin that, with respect to Dr. Turner's June 20, 2011 progress note, he [Dr. Turner] believed that Dr. Mozena was capable of practicing as he had done for the past approximately 10 years. Dr. Turner admitted to Dr. Reichlin that he did not know much about podiatry, that he did not really understand the distinction between pedorthics and podiatry, and that he had "conflated" the two professions in his mind. (Ex. A5 at 9-11; test. of Reichlin.) When discussing Dr. Mozena's treatment records, Dr. Reichlin perceived that Dr. Turner had either forgotten about or was not aware of some significant events, such as Dr. Mozena stopping his medications in December 2008, Dr. Mozena being hospitalized in Seattle in 2009, and Dr. Mozena stopping his medications in September 2009. (Test. of Reichlin.)

32. On July 6, 2012, Dr. Reichlin had a telephone conference with Mr. Urlwyler. (Ex. A5 at 9, 11.) Dr. Reichlin's notes with regard to that conference state, in part:

> [I]nitially Dr. Mozena said he wanted to discuss his relationship issues. However, it became apparent that he was not interested in any kind of psychotherapy, in that he did not want to talk about his feelings or thoughts, and the therapist began to see this treatment as "case

[11] See Exhibit A5 at pages 8 and 9 for a full list of the records, notes, reports, and correspondence Dr. Reichlin reviewed.

> management" in concert with the work of the psychiatrist. In that capacity the meetings are the same frequency as with the doctor, about once every three to six months, and the subjects discussed are concrete life goals and not mental health symptoms or other psychological topics. * * * Dr. Mozena doesn't talk about his mental symptoms even when he is emotionally stable. He's interested in going along with a "plan," such as taking medications and seeing the doctor, but he does not respond to probing questions. * * * * *.

(*Id.* at 11; test. of Dr. Reichlin.)

33. In a written report dated July 9, 2012, Dr. Reichlin noted the following with respect to his interview with Dr. Mozena:

> Whenever our conversation turned to his mental health needs and concerns he was scarcely able to provide an accurate account. He understood globally that the [B]oard wanted him to be competent to practice and wants the public to be protected, and that in his case he had been hospitalized in psychiatric hospitals in Portland and that the problem has been "stress." * * *.
>
> When I asked him to explain the mental problem that might concern the Board his answer started with a summary of his professional interest and education, and ended with, "then, in 1997 I got stressed out, made a poor decision, and [it] has been [like that] ever since." With prompting he added that he had "lots of suicidal thoughts through the years."
>
> I asked many more questions about his mental history; usually he started talking about his work, or something else. Asked about what symptoms he has experienced, he said, "Stressed out. Anxiety, maybe, some paranoia in the past, some sadness, when I quit the second practice I was quite sad." I asked him specifically about paranoia, and he talked about a man selling marionettes who "spooked" him. He said he became afraid the man was watching him, but then he denied being afraid.
>
> He acknowledged having "lots of suicidal thought through the years." However, he did not link his suicide risk to his mental state and strove to downplay its seriousness[.]
>
> * * * * *
>
> He said he felt that currently his mental condition is stable. Asked what to do if something went wrong he said he would call his doctor or "Charley" (his social worker). I asked what message he would give them, and he said "too much stress." I asked him if he had a plan to deal with stress; he
> / / /

said he wants to have a "balanced life, a limited work day with set hours, let it go to ER, my time to have a life. Maybe get married again." * * *.

(Ex. A5 at 5-6.)

34. At the time of the evaluation, Dr. Mozena informed Dr. Reichlin that he was taking Sertraline, 100 mg, twice per day, and an unknown dose of Ziprasidone once a day. Dr. Turner confirmed to Dr. Reichlin, in July 2012, that Dr. Mozena was in fact taking 100 mg of Sertraline once per day and 40 mg of Ziprasidone twice per day. (Ex. A5 at 7.)

35. Dr. Reichlin diagnosed Dr. Mozena with Bipolar I Disorder, severe with psychotic features, in partial remission. Dr. Reichlin noted in his written report that Dr. Mozena also has avoidant and dependent personality traits. (Ex. A5 at 1; test. of Reichlin.) Personality traits affect how a person copes with problems and how that person tends to run his or her life. When a psychiatrist speaks of avoidance, the psychiatrist is typically referring to a person avoiding "a full understanding of [his or her] own emotional issues * * *—basically, avoiding emotional pain." (Test. of Reichlin.) Dr. Reichlin opines that Dr. Mozena's avoidant tendencies interact with his Bipolar I disorder and contribute to Dr. Mozena's lack of awareness regarding, and poor insight into, his mental condition. (*Id.*)

36. At the time of the evaluation, Dr. Reichlin assessed Dr. Mozena's insight into his mental illness as "quite superficial, significantly superficial, to the extent that I think it would constitute a problem in his ability to maintain emotional stability." (Test. of Dr. Reichlin.)

37. In his report, Dr. Reichlin made the following conclusions:

> Dr. Mozena has a serious, chronic mental disorder that has recurrent episodes. When he becomes symptomatic there is a danger, based on his history, that he can be psychotic, actively disturbed (seriously depressed and possibly manic), and behaviorally agitated. In the past he has been hyperreligious, suicidal, and paranoid, and these symptoms affect his judgment.
>
> In the past he has been well stabilized using psychiatric medications for periods of time, and at the time of this evaluation he was stable. However, without consulting with doctors he has frequently made changes in his medications, either by changing doses or discontinuing medications altogether.
>
> There is a consistent pattern over the course of his psychiatric contact, during the last 15 or more years, that he maintains woefully inadequate insight about his mental illness. This has caused him to make poor decisions about his mental health care and to disregard the advice he receives from his doctors. These problems contribute to his relatively low social and occupational functioning.
> ///

> Largely as a result of his poor insight, the next time his mental health deteriorates there will not likely be a safety net or an adequate plan to avoid dangerous pitfalls. He has no realistic plan to deal with stress in the future.
>
> Other than a relatively stable period from 1988 to 1996, his professional history suggests that working as a podiatrist has been stressful enough for him to suffer mental decompensations as a result.
>
> Taking into account his age,[12] length of illness, personality, and history of contacts with many mental health professionals, the likelihood is low that he will gain insight into his mental illness to the extent that it will improve his ability to absorb a deterioration without severe functional consequences.

(Ex. A5 at 2.)

38. In his written report, Dr. Reichlin made the following recommendations for monitoring:

> As a practicing podiatrist [Dr. Mozena] would have to work as an independent professional and keep adequate trac[k] of his mental health condition to prevent a deterioration that might injure patients. It is unlikely he could do this, and there is no external monitoring that can realistically make up for his failings in this area.

(Ex. A5 at 2-3.)

39. There is a general expectation that a licensed physician, of any type, possesses a certain level of judgment. Physicians are entrusted to employ this judgment when providing care to patients. When a person with a mental illness becomes symptomatic, or begins to become symptomatic, the person's judgment is likely to become faulty. Dr. Reichlin has serious concerns about Dr. Mozena's current ability to practice medicine safely because of the risk of Dr. Mozena becoming symptomatic—perhaps unpredictably and without Dr. Mozena or anyone else being aware of it. When Dr. Mozena has become symptomatic in the past, he has at times become manic as well as psychotic. Dr. Reichlin opines that the unreliability that comes with being in a manic and/or psychotic state would make practicing medicine "quite difficult" for Dr. Mozena. (Test. of Reichlin.)

40. If Dr. Mozena obtains his podiatry license, his patients would include elderly and diabetic patients. Some patients are unaware that they have diabetes, and Dr. Mozena would, among other things, need to be capable of diagnosing that condition. There is a risk of harm to patients if a condition such as diabetes goes untreated or is misdiagnosed. A diabetic patient who does not receive a timely diagnosis could, for example, lose a foot. With a diabetic patient,

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[12] Dr. Mozena was 61 years old at the time of the evaluation. (Ex. A5 at 1.)

"clipping a little toenail can affect the whole body because * * * [if they bleed and] it gets infected, they can lose their leg." (Test. of Dr. Mozena.)

41. In a Progress Note Addendum dated June 20, 2011, Dr. Turner wrote, in part:

> This addendum is to address [Mr. Mozena's] request for a letter to [the] Oregon Medical Board regarding his fitness to practice podiatry.
>
> I have examined and evaluated Mr. Mozena today, and at the present time, he indeed appears fit to practice podiatry.

(Ex. R51.)

42. Jon T. Fitzgerald, DPM, of the Lake Oswego Foot Clinic, has agreed to serve as a mentor for Dr. Mozena during Dr. Mozena's "application and credentialing process with the Oregon Medical Board." (Ex. R3.) In a letter dated August 8, 2012, Dr. Fitzgerald stated, in part:

> During this process I will be available to Dr[.] Mozena for discussion and recommendations of medical issues as they relate to patient care as well as issues relating to medical practice. My practice will be available to Dr[.] Mozena as a resource should he need the access to a physical location with an equipped office and staff.
>
> Dr[.] Mozena is encouraged to call at any time for a second opinion or assistance as needed. This may relate to patient care including general medical problems or surgical considerations.

(*Id.*)

43. In February and March 2013, Dr. Mozena completed approximately 30 hours of continuing education instructional media activities through the Ohio College of Podiatric Medicine, Office of Institutional Advancement.[13] (Exs. A6 through A47.) He looks forward to continuing his studies in podiatry. (Test. of Dr. Mozena.)

44. On April 10, 2013, Dr. Mozena had a 25-minute office visit with Dr. Turner. (Ex. R52.) In a Progress Note dated April 10, 2013, Dr. Turner wrote, in part:

> [Mr. Mozena's] [continued] mood stability and overall well-being would be well-served by his being able to return to his chosen line of work in
>
> ///

[13] Examples of topics include Foot Pathology – Specific Orthotics, Gait Analysis, The Basic Biomechanical Exam, Triceps Surae Lengthening, Podiatric Dermatology, Biopsy Techniques, Diagnosing Skin Cancer, Advanced Technology in Healing the Diabetic Foot Wound, Nutrition and Diabetes, Strategies in Preventing Diabetic Amputations, and Imaging & Calcaneal Fracture Treatment. (Exs. A6 through A43.)

podiatry. I have seen no evidence over the past 2+ years of any difficulties that would interfere [with] his performing that kind of work.

(*Id.* at 2.)

45. In a written declaration dated April 15, 2013, Dr. Fitzgerald stated, in part:

> I am willing and able to act as a professional mentor for Dr. Mozena. This would include being available to him on a regular basis to answer any podiatric-related questions he may have; to consult with him on patient care; to guide him in the process of running a medical clinic; and/or to refer him to other professional resources.

(Ex. R49.) Dr. Mozena does not plan to work in Dr. Fitzgerald's office. (Test. of Dr. Mozena.) If Dr. Mozena obtains his podiatric license and begins practicing, he has the following plan in place for procedures:

> [I] thought that if I did something that was a procedure * * * like an ingrown toenail, cut that out, I'd bring the patient to his office and have him supervise.

(*Id.*)

46. Dr. Mozena actively participates in a Food Addicts 12-step program. As a member, he is required to engage in three phone calls each day with other members, and to attend one meeting each week. In the past year, he has lost approximately 122 pounds. (Test. of Dr. Mozena.)

47. Dr. Mozena has a large, supportive family that includes his mother and seven brothers and sisters. He talks daily with one or more family members. His brother, John, has been a practicing podiatrist in Oregon for at least 20 years. (Test. of Dr. Mozena, P. Mozena.)

48. At hearing, in response to a question regarding whether and when he realized that he needed to take his psychiatric medications as prescribed, Dr. Mozena stated:

> I first came to the conclusion that I had to do what my doctor told me to do. And that was my first conclusion. And then now as I start to reflect on my life more and more, I'm starting to appreciate having a bipolar illness that I'm going to have for a long time. It's just I don't think it's going to go away, so I'm not going to stop taking my medicine.

(Test. of Dr. Mozena.) Despite Dr. Mozena's hearing testimony, Dr. Reichlin still believes that Dr. Mozena has poor insight into his mental illness. In Dr. Reichlin's psychiatry practice, he has heard "lots and lots of people" give answers similar to Dr. Mozena's (referenced above). Dr. Reichlin believes that demonstrated change in a person's behavior and/or abilities is a more reliable indicator of mental health insight than mere statements. (Test. of Reichlin.)

CONCLUSIONS OF LAW

1. The Board may deny Dr. Mozena's application for a license to practice as a podiatric physician in Oregon based on unprofessional or dishonorable conduct.

2. The Board may deny Dr. Mozena's application for a license to practice as a podiatric physician in Oregon based on impairment.

3. The Board may assess the costs of the proceeding against Dr. Mozena.

OPINION

Denial of application for licensure

Under ORS 677.015, the Board is charged with protecting the public from the practice of medicine by unauthorized or unqualified persons.[14] ORS 677.190 allows the Board to refuse to grant a license to practice in Oregon for any of several delineated reasons. The Board has proposed denying Dr. Mozena's application for a license to practice as a podiatric physician based on the following provisions in ORS 677.190:

> (1)(a) Unprofessional or dishonorable conduct.
>
> * * * * *
>
> (7) Impairment as defined in ORS 676.303.

As the proponent of the position that Dr. Mozena's application should be denied, the Board has the burden of coming forward with reliable, probative, and substantial evidence to support its position. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"). If the Board meets its burden, then the burden shifts to Dr. Mozena to present reliable, probative, and substantial rebutting evidence. If he does so, then all credible evidence, and all reasonable and permissible inferences drawn from that evidence, are weighed to determine which propositions are more probably true than false. *See Metcalf v. AFSD*, 65 Or App 761, 765 (1983) (in the absence of legislation specifying a different standard, the standard of proof in an administrative hearing is preponderance of the evidence); *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987) (proof by a preponderance of the evidence means the fact finder is persuaded the facts asserted are more likely than not true).

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[14] ORS 677.015 provides:

> Recognizing that to practice medicine is not a natural right of any person but is a privilege granted by legislative authority, it is necessary in the interests of the health, safety and welfare of the people of this state to provide for the granting of that privilege and the regulation of its use, to the end that the public is protected from the practice of medicine by unauthorized or unqualified persons and from unprofessional conduct by persons licensed to practice under this chapter.

1. Alleged deficiencies in medical knowledge and clinical judgment

ORS 677.190(1)(a) allows the Board to deny an application for licensure for "unprofessional or dishonorable conduct." With respect to the practice of podiatry, ORS 677.188(4)(a) states, in part, that "unprofessional or dishonorable conduct" includes:

> [A]ny conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might adversely affect a * * * podiatric physician and surgeon's ability safely and skillfully to practice * * * podiatry[.]

The Board contends that Dr. Mozena has "serious gaps in his medical knowledge and judgment" and that he cannot therefore currently practice podiatric medicine safely and skillfully. Board's Final Closing Argument at 7. The Board relies on Dr. Mozena's absence from podiatric practice for the past 16 years and the deficiencies identified in the CPEP Report to support its contention.

Dr. Mozena contends that his podiatric skills are either "adequate or readily achievable through remediation." Respondent's Post-Hearing Brief at 1. To that end, he asserts that "[n]othing in the record supports a conclusion that remedial education would not be sufficient to address and resolve the Board's concerns about [his] lack of current training." *Id.* at 4. If granted a license, Dr. Mozena intends to practice only outpatient podiatry, with no surgical privileges.[15] He contends that he plans to essentially continue the pedorthic work he capably performed from 2003 to 2010 at the VA, with some additional outpatient podiatric procedures (*e.g.* trimming nails, cutting out ingrown toenails).

First, the record establishes that Dr. Mozena has not practiced podiatry since 1997. While his hearing testimony suggests that his work at the VA may have included some aspects of podiatry, to the extent that his taking patient histories and conducting foot examinations at the VA constituted the practice of podiatric medicine,[16] such practice was unlicensed and may not

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[15] ORS 677.132(1) allows the Board to issue a "limited license" on a temporary basis under certain circumstances, and provides, in part:

> When a need exists, the Oregon Medical Board may issue a limited license for a specified period to an applicant who possesses the qualifications prescribed by the rules of the board. The board shall supervise the activities of the holder of a limited license and impose such restrictions as it finds necessary. Each person holding a limited license must obtain an unlimited license at the earliest time possible. After such time the board shall refuse to renew a limited license at the end of a specified period if it determines that the holder thereof is not pursuing diligently an attempt to become qualified for a license.

Neither the Board nor Dr. Mozena referenced ORS 677.132, and there is no evidence that Dr. Mozena has sought limited licensure under this particular provision.

[16] ORS 677.085(4) states that a person practices medicine if he or she "offer[s] or undertake[s] to diagnose, cure or treat in any manner, or by any means, methods, devices or instrumentalities, any

now be counted as "experience" in assessing his current ability to safely and skillfully practice podiatric medicine.

Second, the record establishes that an independent organization, CPEP, evaluated Dr. Mozena to assess his medical competence and determined that he had "inadequate" clinical judgment and reasoning and that his knowledge was "superficial in several areas and out of date in others." Exhibit A4 at 2. CPEP noted the following:

> [H]e was not accurate regarding the signs and symptoms of plantar fasciitis[,] nor was he able to discuss current treatment options. Dr. Mozena did not demonstrate thorough knowledge of management for patients with paresthesias. Dr. Mozena did not demonstrate the ability to adequately interpret lab findings when presented with a hypothetical patient with multiple lab abnormalities. Additionally, he was not current regarding the indications for imaging modalities. He did not provide an appropriate discussion regarding the care of a patient with a diabetic foot infection.
>
> Dr. Mozena was also out of date in the area of pharmacology. * * *. He was not aware of antibiotic options for diabetic foot infection treatment[.]
>
> Some of the medical knowledge needs identified by the consultants also had implications related to clinical judgment[.]
>
> * * * * *
>
> Dr. Mozena demonstrated variable clinical judgment and reasoning in certain areas. * * *. While he did recognize his limitations and appropriately considered use of consultants, he did so in areas of expected knowledge for the practicing podiatrist. * * *. He displayed variable judgment regarding his information gathering skills. * * * [For example,] when discussing bunions, important information was omitted during Dr. Mozena's data acquisition.
>
> * * * * *. He lacked the ability to appropriately formulate structured differential diagnosis. In addition, he was not able to adequately recognize the acuity of an illness and develop appropriate plans. For example, he did not recognize the patient discussed above with a diabetic foot infection was seriously ill and required hospitalization[.]

Id. at 5-7.

With regard to practicing in the outpatient podiatric setting, CPEP recommended that Dr. Mozena undertake supervised remedial education, which would initially include an *onsite*

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disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person."

preceptor ("Dr. Mozena should initially precept all patients with an onsite preceptor, prior to directing the disposition of the patient * * * to discuss data collection, diagnostic considerations and conclusions, and management.") Exhibit A4 at 2-3; emphasis omitted. For outpatient procedures, CPEP recommended that Dr. Mozena initially have direct supervision, and that he have an educational preceptor (different from a practice monitor) to regularly review cases and documentation, discuss specific topics, and plan for future learning. CPEP also recommended that he engage in continuing education and self-study.

Dr. Mozena demonstrated through his testimony, as well as through Exhibits A6 through A47, that he is ready and willing to pursue educational coursework relating to the practice of podiatry. In addition, Dr. Mozena has enlisted an established podiatrist, Dr. Fitzgerald, to serve as a practice mentor to him in the event the Board grants Dr. Mozena's request for licensure. Dr. Fitzgerald would be regularly available to Dr. Mozena to discuss medical issues, patient care, and medical clinic matters, but Dr. Fitzgerald would not be onsite to directly supervise Dr. Mozena's patient interactions. However, Dr. Mozena would have Dr. Fitzgerald directly supervise any medical procedures Dr. Mozena performs (such as cutting out an ingrown toenail). Dr. Mozena's brother, John, a practicing Oregon podiatrist, is also an available podiatric resource to Dr. Mozena.

Even given Dr. Mozena's enthusiasm for practicing podiatric medicine, his willingness to engage in remedial education, his procurement of a podiatric mentor, and his assertions that he wants to continue performing essentially pedorthic work, the evidence nonetheless establishes, more likely than not, that Dr. Mozena's prolonged absence from the podiatry field and his demonstrated deficiencies in medical knowledge, judgment, and reasoning render him *currently* unable to safely and skillfully practice podiatry, even in a restricted capacity. That Dr. Mozena might *at some future time* be able to remedy some or all of the deficiencies that he currently has is not sufficient to establish that he is presently qualified and therefore able to safely and skillfully practice podiatry. Thus, under ORS 677.190(1)(a) and ORS 677.188(4)(a), the Board may deny his application for licensure.

2. Alleged impairment

ORS 677.190(7) allows the Board to deny an application for licensure for "impairment." ORS 676.303(1)(b) defines "impairment," in part, as "an inability to practice with reasonable competence and safety due to * * * a mental health condition."

The record establishes that Dr. Mozena has a serious mental illness—bipolar disorder—and that between 1986 and 2010, he was hospitalized for mental health issues, or he at least presented to an emergency room with mental health symptoms, 11 times.[17] He currently takes Ziprasidone to manage the symptoms of his illness.

[17] This includes two occasions in 1986, once in 1987, once in 1997, once in 1998, twice in 2001 (both admissions were involuntary, with the second admission resulting in civil commitment), once in 2002, twice in 2009 (one admission was involuntarily), and once in approximately 2010. (*See* Exs. A2, A5; test. of Dr. Mozena.)

The Board contends that Dr. Mozena cannot practice podiatric medicine with reasonable competence and safety because he lacks insight into his bipolar disorder and he "has not participated in the type of therapy that would help him gain that insight." Final Closing Argument at 7. To support its contention, the Board relies primarily on Dr. Reichlin's evaluation and opinions.

Dr. Mozena argues that the Board may not deny him licensure, pursuant to ORS 677.190(7), based on an "unsupported fear that he may one day do something to endanger a patient." Respondent's Post-Hearing Brief at 9. He argues that, even when symptomatic, he has never posed a danger to his patients or to the public and the Board has no evidence that he would do so in the future. He further argues that he now recognizes his mental illness and the fact that he must take his medications to remain symptom-free. To support his arguments, he relies on the opinion of his treating psychiatrist, Dr. Turner, the testimony of his brother, Peter Mozena, and the fact that he (Dr. Mozena) has not had a mental health crisis since 2010.

Whether Dr. Mozena lacks insight into his mental illness is significant in determining whether he lacks the ability to practice podiatric medicine with reasonable competence and safety. The record establishes that he has historically lacked insight into his condition, as evidenced by his decisions on several occasions to stop taking his psychiatric medications, or to change the dosage, without first discussing those actions with his psychiatrist. Moreover, Dr. Mozena admitted at hearing that he previously failed to understand his illness, the fact that it was not going to go away, and the fact that he needed medication to manage it.

As recently as May 2012, when Dr. Reichlin evaluated Dr. Mozena at the Board's request, Dr. Mozena failed to recognize or appreciate that he had been psychotic and suicidal during a three-day involuntarily hospitalization in April 2009. When describing that hospitalization to Dr. Reichlin, Dr. Mozena stated, in part:

> I checked into psych because I was getting sick . . . thought it was a heart attack. Went to ER, they didn't do anything, I walked around the hospital, wanted to come in and they admitted me. Then I checked out a few days later. [In response to the question: In what way sick?] Sick . . . not only chest pain but really sick at the time. Stress . . . I thought I checked myself in, problems, walking halls, not knowing what to do, crying.

Exhibit A5 at 6. Following his explanation, Dr. Mozena denied to Dr. Reichlin that he was psychotic or suicidal at the time, despite medical records stating that he was suicidal, and that he required seclusion for some portion of his hospitalization. *See id.* at 11.

After conducting the independent mental health evaluation, Dr. Reichlin concluded that Dr. Mozena had "woefully inadequate insight" regarding his mental illness. Exhibit A5 at 2. Dr. Mozena further opined:

> Largely as a result of his poor insight, the next time his mental health deteriorates there will not likely be a safety net or an adequate plan to
> ///

> avoid dangerous pitfalls. He has no realistic plan to deal with stress in the future.
>
> * * * * *
>
> Taking into account his age [of 61], length of illness, personality, and history of contacts with many mental health professionals, the likelihood is low that he will gain insight into his mental illness to the extent that it will improve his ability to absorb a deterioration without severe functional consequences.

Id.

At hearing, Dr. Mozena testified that he now recognizes that he has bipolar disorder and that his illness is not going to go away. He further testified that, given these considerations, he will not stop taking his medications. However, when testifying at hearing about past hospitalizations or emergency room visits (which were more likely than not related to mental health issues), Dr. Mozena tended to speak in generalities about "health issues," being "sick," or having "stress," and he sometimes cited to physical complaints as the basis for the visits (*e.g.* heart trouble, chest pain, abdominal pain). In addition, with regard to an emergency room visit in Tallahassee, Florida in approximately 2010, he testified that he went to the emergency room because he had no money and nowhere else to go. He neither suggested nor admitted at hearing that the visit was related to mental health issues. The record, however, supports the conclusion that he was experiencing a mental health crisis at the time.

Despite Dr. Mozena's hearing testimony, Dr. Reichlin's believes that Dr. Mozena continues to lack insight into his mental illness. Dr. Reichlin asserts that Dr. Mozena's use of "buzz words" at hearing such as "sick," "ill" or "stressed" when discussing his mental health history demonstrates that Dr. Mozena continues to view his mental health issues in a global way. Dr. Reichlin opines that Dr. Mozena's avoidant tendencies interact with his bipolar disorder and contribute to his lack of awareness and insight. Dr. Reichlin describes Dr. Mozena's current level of insight as "quite superficial, significantly superficial, to the extent that I think it would constitute a problem in his ability to maintain emotional stability." Testimony of Reichlin.

The record establishes that bipolar disorder primarily affects the emotions. Dr. Reichlin opines that Dr. Mozena's emotional stability would be more reliably maintained if he engaged in frequent psychotherapy that explored his emotional life, his emotional changes, and the things that have historically proven problematic to his emotional state. However, Dr. Mozena has thus far shown an inability and/or an unwillingness to fully engage in such therapy. Since 2010, he has shown little interest in engaging in psychotherapy, or in talking about his feelings and thoughts, with therapist Urlwyler. His infrequent sessions with Urlwyler are little more than "case management" sessions that augment medication management performed by psychiatrist Turner.

Dr. Turner has provided no opinion on the specific issue of whether Dr. Mozena possesses insight into his mental illness. Dr. Turner has, however, twice provided opinions on

Dr. Mozena's general mental fitness to practice podiatry. In a Progress Note Addendum dated June 20, 2011, Dr. Turner wrote, in part, "I have examined and evaluated Mr. Mozena today, and at the present time, he indeed appears fit to practice podiatry." Exhibit R51. In a Progress Note dated April 10, 2013, Dr. Turner wrote, in part, that Dr. Mozena's "[continued] mood stability and overall well-being would be well-served by his being able to return to his chosen line of work in podiatry. I have seen no evidence over the past 2+ years of any difficulties that would interfere [with] his performing that kind of work." Exhibit R52 at 2. As Dr. Mozena's treating psychiatrist for more than 10 years, Dr. Turner's opinions as to Dr. Mozena's work fitness might be entitled to more weight than Dr. Reichlin's opinions if Dr. Turner's opinions were based on reliable information and if they were well-explained and well-reasoned.

However, the record does not demonstrate that Dr. Turner's opinions should be accorded greater weight than Dr. Reichlin's. First, the record establishes that for some time now, Dr. Mozena has seen Dr. Turner no more than four times per year. Second, the visits do not involve "talk" therapy, but rather they focus on the management of Dr. Mozena's medication (including clarification of symptoms, discussion of any medication side effects). Third, when rendering his opinions, Dr. Turner did not understand the difference between podiatry and pedorthics, and he conflated the work Dr. Mozena had been doing at the VA with the practice of podiatry. Fourth, more likely than not, Dr. Turner did not remember (or was not aware of) Dr. Mozena stopping his medications in 2008, becoming hospitalized in Seattle in 2009, and stopping his medications in September 2009 when he rendered his opinions on Dr. Mozena's fitness to practice podiatry. Fifth, Dr. Turner's opinions are not well-explained or well-reasoned. The June 20, 2011 progress note addendum simply states, in conclusory fashion, that Dr. Turner examined Dr. Mozena and that Dr. Mozena appears fit to practice podiatry. While the April 10, 2013 progress note contains slightly more information, it still does not explain what type of evaluation Dr. Turner conducted on April 10, 2013 to reach his conclusion (or, indeed, whether he conducted any sort of evaluation at all). For these reasons, Dr. Turner's opinions regarding Dr. Mozena's ability to perform podiatric medicine is not accorded significant weight, and certainly not greater weight than Dr. Reichlin's opinions.

Based on the medical documentation in the record, Dr. Mozena's hearing testimony, and the well-explained and well-reasoned opinions of Dr. Reichlin, the Board concludes, more likely than not, that Dr. Mozena lacks insight into his bipolar disorder. This, combined with his lack of engagement in meaningful psychotherapy and the recurrent nature of his illness, puts him at significant risk of experiencing a future mental health deterioration, perhaps unpredictably and without him or anyone else being immediately aware of it.[18]

While there is no evidence that Dr. Mozena has ever become violent or a danger to others when experiencing a manic episode or other mental health deterioration, his past symptoms include depression, mania, psychosis, hyperreligious fixation, suicidal ideation, and paranoia—all symptoms that may profoundly compromise his judgment. The practice of medicine and the provision of patient care rely heavily on professional judgment, and the lack thereof poses a danger to patients. As Dr. Mozena himself testified at hearing, "clipping a little toenail can

[18] While the record establishes that Dr. Mozena engages in a 12-step food addiction program and that he has a large, supportive family with whom he frequently communicates, such support is nonetheless insufficient to negate the significant risk of Dr. Mozena experiencing a future mental health deterioration.

affect the whole body" of a diabetic patient because of the risk that one cut could lead to an infection, and subsequently to the loss of the foot. Testimony of Dr. Mozena.

Given the above, the ALJ concluded in the Proposed Order, and the Board now concludes, that the record has established by a preponderance of the evidence that Dr. Mozena is unable to safely practice podiatric medicine with reasonable competence and safety due to his bipolar disorder. The Board may therefore deny his application for licensure pursuant to ORS 677.190(7) and 676.303(1)(b).

Costs of Proceedings

Under ORS 677.265, the Board may, in addition to denying an application for licensure, assess the costs of proceedings to the applicant. ORS 677.265 provides, in part:

> [T]he Oregon Medical Board may:
>
> * * * * *
>
> (2) Issue, deny, suspend and revoke licenses and limited licenses, assess costs of proceedings and fines and place licensees on probation as provided in this chapter.

The Board has established sufficient grounds for denial of Dr. Mozena's application for licensure. Pursuant to ORS 677.265(2), it is within the scope of the Board's authority to assess the costs of the proceeding.

FINAL ORDER

The Oregon Medical Board issues the following order:

Joseph Michael Mozena's application for a license to practice as a podiatric physician in Oregon is denied. In addition, Dr. Mozena is assessed the costs of this hearing, as set forth in the Addendum to Final Order – Bill of Costs. Costs shall be due within 90 days from the date the Board issues its Bill of Costs.

DATED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 et seq.

CERTIFICATE OF MAILING

On October 8, 2013 I mailed the foregoing Final Order regarding Joseph Michael Mozena, DPM, to the following parties:

By: First Class and Certified Mail
Certified Mail Receipt # 7013 1090 0001 2845 3651

Joseph Mozena, DPM
PO Box 86034
Portland, OR 97286

By: First Class and Certified Mail
Certified Mail Receipt # 7013 1090 0001 2845 3644

Andrea Coit
Attorney at Law
Harrang Long Gary Rudnick PC
360 E 10th Ave Ste 300
Eugene OR 97401

By: First Class Mail

Warren Foote
Senior Assistant Attorney General
Department of Justice
1162 Court St NE
Salem OR 97301

Beverly Loder
Investigative Assistant

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of:	)	
	)	
JOSEPH MICHAEL MOZENA, DPM	)	ADDENDUM TO FINAL
License No. DP00154	)	ORDER - BILL OF COSTS
	)	

1.

On October 3, 2013, the Oregon Medical Board issued a Final Order in the matter of Joseph Michael Mozena, DPM. In this Order, Dr. Mozena was assessed the costs related to his Contested Case Hearing held on April 24, 2013. This payment is due within 90-days from the date this Bill of Costs is signed by the Board's Executive Director.

2.

The state of Oregon, by and through the Oregon Medical Board, claims costs related to the April 24, 2013, Contested Case Hearing in the above-captioned case as follows:

Total Department of Justice costs:		$4,343.80
AAG hours - 25.40 hrs @ $143/hr	3,432.00	
AAG hours - 1.4 hrs @ $159/hr	222.60	
Paralegal - 8.2 hrs @ $79.00/hr	647.80	
Motor Pool	41.40	
Total Office of Administrative Hearings (OAH) costs:		$6,690.87
OAH Direct charges	3,708.28	
OAH Administrative charges	2,982.59	
Security		$ 200.00
Court Reporter Appearance - Synergy Corporation		$ 696.40
TOTAL COSTS DUE:		**$11,931.07**

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The above costs are certified as a correct accounting of actual costs incurred preparing for and participating in the Contested Case Hearing in this matter.

Dated this 15th of October, 2013

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

KATHLEEN HALEY, JD
EXECUTIVE DIRECTOR

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of JAE OK PARK, MD LICENSE NO. MD13752	)))))	INTERIM STIPULATED ORDER

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Jae Ok Park, MD (Licensee) is a licensed physician in the state of Oregon and holds an active medical license.

2.

The Board received credible information regarding Licensee that resulted in the Board initiating an investigation. The results of the Board's investigation to date have raised concerns to the extent that the Board believes it necessary that Licensee agree to certain terms until the investigation is completed.

3.

In order to address the Board's concern, Licensee and the Board agree to the entry of this Interim Stipulated Order, which will remain in effect while this matter remains under investigation, and provides that Licensee shall comply with the following conditions:

3.1 Licensee must immediately cease the prescribing of all scheduled controlled substances.

3.2 For a period not to exceed 30 days from the signing of this order, Licensee may authorize one (1) refill prescription for pain medication for existing patients for no more than 30 days of such medication. Licensee may not increase the dosage of controlled substances or issue any new prescriptions of controlled substances for existing patients.

3.3 Licensee must not accept any new patients in need of controlled substances for any medical condition.

3.4 Licensee understands that violating any term of this Order will be grounds for disciplinary action under ORS 677.190(17).

3.5 Licensee understands this Order becomes effective the date he signs it.

4.

At the conclusion of the Board's investigation, the Board will decide whether to close the case or to proceed to some form of disciplinary action. If the Board determines, following that review, not to lift the requirements of this Order, Licensee may request a hearing to contest that decision.

5.

This order is issued by the Board pursuant to ORS 677.410, which grants the Board the authority to attach conditions to the license of Licensee to practice medicine. These conditions will remain in effect while the Board conducts a complete investigation in order to fully inform itself with respect to the conduct of Licensee. Pursuant to ORS 677.425, Board investigative materials are confidential and shall not be subject to public disclosure, nor shall they be admissible

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as evidence in any judicial proceeding. However, as a stipulation this Order is a public document and is reportable to the National Databank and the Federation of State Medical Boards.

IT IS SO STIPULATED THIS 23rd day of September, 2013.

SIGNATURES REDACTED

JAE OK PARK, MD

IT IS SO ORDERED THIS 23rd day of September, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURES REDACTED

KATHLEEN HALEY, JD
EXECUTIVE DIRECTOR

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
SUSAN ELIZABETH POLCHERT, MD	)	ORDER TERMINATING
LICENSE NO. MD16479	)	CONSENT AGREEMENT
	)	

1.

On October 11, 2012, Susan Elizabeth Polchert, MD (Licensee) entered into a Consent Agreement with the Oregon Medical Board (Board). This Order placed conditions on Licensee's Oregon medical license. On August 4, 2013, Licensee submitted a written request to terminate this Order.

2.

Having fully considered Licensee's request and her successful compliance with the terms of this Order, the Board terminates the October 11, 2012, Consent Agreement, effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of THOMAS JOHN PURTZER, MD LICENSE NO. MD12880	)	INTERIM STIPULATED ORDER

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Thomas John Purtzer, MD (Licensee) is a licensed physician in the state of Oregon and holds an active medical license.

2.

Licensee is board certified in neurosurgery. The Board received credible information regarding Licensee that resulted in the Board initiating an investigation. The results of the Board's investigation to date have raised concerns to the extent that the Board believes it necessary that Licensee agree to certain terms until the investigation is completed.

3.

In order to address the Board's concern, Licensee and the Board agree to the entry of this Interim Stipulated Order, which will remain in effect while this matter remains under investigation, and provides that Licensee shall comply with the following conditions:

3.1 Licensee will not accept any new chronic pain or buprinorphine/naloxone (Suboxone) patient into his practice and will not initiate chronic pain medications or Suboxone for any patient effective the date the Licensee signs this Interim Stipulated Order.

3.2 Licensee will facilitate the transfer of care for all of his chronic pain and Suboxone patients to new providers. Licensee may authorize one (1) prescription for pain

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medication and/or Suboxone for existing patients for no more than thirty (30) days of such medications. Licensee may not increase the dosage of controlled substances for existing patients during the transition to new care providers.

3.3 Licensee understands that violating any term of this Order will be grounds for disciplinary action under ORS 677.190(17).

3.4 Licensee understands this Order becomes effective at 5:00 pm on the date that he signs this Order.

4.

At the conclusion of the Board's investigation, the Board will decide whether to close the case or to proceed to some form of disciplinary action. If the Board determines, following that review, not to lift the requirements of this Order, Licensee may request a hearing to contest that decision.

5.

This order is issued by the Board pursuant to ORS 677.410, which grants the Board the authority to attach conditions to the license of Licensee to practice medicine. These conditions will remain in effect while the Board conducts a complete investigation in order to fully inform itself with respect to the conduct of Licensee. Pursuant to ORS 677.425, Board investigative materials are confidential and shall not be subject to public disclosure, nor shall they be admissible

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as evidence in any judicial proceeding. However, as a stipulation this Order is a public document and is reportable to the National Databank and the Federation of State Medical Boards.

IT IS SO STIPULATED THIS 24 day of SEPTEMBER, 2013.

SIGNATURES REDACTED

THOMAS JOHN PURTZER, MD

IT IS SO ORDERED THIS 25th day of September, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURES REDACTED

KATHLEEN HALEY, JD
EXECUTIVE DIRECTOR

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of MICHAEL TRUMAN ROBINSON, DO LICENSE NO. DO10555	)))))	ORDER TERMINATING CORRECTIVE ACTION AGREEMENT

1.

On July 12, 2012, Michael Truman Robinson, DO (Licensee) entered into a Corrective Action Agreement with the Oregon Medical Board (Board). This Agreement placed conditions on Licensee's Oregon license. On July 31, 2013, Licensee submitted documentation that he has successfully completed all terms of this Agreement and requested that this Agreement be terminated.

2.

The Board has reviewed the documentation submitted by Licensee and has determined that Licensee has successfully complied with all of the terms of this Agreement. The Board terminates the July 12, 2012, Corrective Action Agreement, effective the date this Order is signed by the Board Chair.

IT IS SO ORDERED this 3rd day of October, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

ROGER M. MCKIMMY, MD
Board Chair

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of	)	
	)	
ELIZABETH VANDERVEER, MD	)	STIPULATED ORDER
LICENSE NO. MD23287	)	

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Elizabeth VanderVeer, MD (Licensee) holds an active license to practice medicine in the state of Oregon

2.

On August 8, 2013, the Board issued a Complaint and Notice of Proposed Disciplinary Action in which the Board proposed taking disciplinary action by imposing up to the maximum range of potential sanctions identified in ORS 677.205(2), to include the revocation of license, a $10,000 fine, and assessment of costs, pursuant to ORS 677.205 against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined by ORS 677.188(4)(a), (b) and (c); ORS 677.190(9) making statements that the licensee knows, or with the exercise of reasonable care should know, are false or misleading regarding skill or efficacy or value of the medicine, treatment or remedy prescribed or administered; and ORS 677.190(13) gross or repeated negligence.

3.

Licensee is an internist, and is the president and medical director of the VanderVeer Center, a cosmetic medical center in Portland. Licensee's acts and conduct that violated the Medical Practice Act are:

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3.1 Licensee advertises a weight loss program at her clinic that uses human chorionic gonadotropin (hCG)[1] in her trademarked weight loss program called "Detox Diet for Doers." On and between the years 2010 - 2012, the Licensee's weight loss program consisted of a 500 calorie a day specific diet[2] and daily injections of hCG, with a standard dose of 150 IU, which her patients self-administered over the course of a minimum of 21 to 23 consecutive days. Patients came in for weigh-ins and measurement sessions on several occasions during the course of the managed diet. Licensee's consent form stated in regard to risks: "There are relatively no risks associated with Detox for Doers."

3.2 Numerous clinical trials have not shown hCG to be effective in producing weight loss. A study published in 1995 found that "there is no scientific evidence that hCG causes weight loss, a redistribution of fat, staves off hunger or induces a feeling of well-being." The Food and Drug Administration (FDA) requires hCG to be labeled with additional information which states " hCG has not been demonstrated to be effective adjunctive therapy in the treatment of obesity. There is no substantial evidence that it increases weight loss beyond that resulting from caloric restriction, that it causes a more attractive or normal distribution of fat, or that it decreases the hunger and discomfort associated with the calorie-restricted diets." The information Licensee provided to patients, to include her informed consent form, was not accurate regarding the benefits as well as the risks and possible side effects associated with hCG, to include headache, fatigue, depression, and gynecomastia in men. Licensee also failed to properly inform her patients of the risks and side effects associated with a severe caloric diet of 500 calories a day, to include, malnutrition, arrhythmias and death.

3.3 As part of the investigation, Licensee provided charts for Patients A - E to the Board for review. These charts reveal that for the initial patient visit to her clinic, Licensee had her patients fill out a health history form and a form in which they stated their treatment goals, to

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[1] HCG is a hormone produced from the human placenta, and is found in the urine of pregnant women. It is approved by the FDA as an injectable prescription drug for the treatment of some cases of female infertility. There are no FDA approved hCG drug products for weight loss.

[2] In 2013, in response to the Board's investigation, Licensee has increased the calorie intake to 750 calories per day. Patients are maintained on this diet regimen for either 23 or 40 days. The calorie intake is then increased to 1200, and then ultimately maintained at 1700 calories.

include the number of pounds they would like to lose. Licensee relies upon two naturopathic physicians on her staff to evaluate her patients and to conduct follow-up. Licensee asserts that they do this in accordance with her written protocols. Licensee's patients were weighed and certain areas of the body were measured, vital signs taken, their body mass index calculated; and laboratory testing ordered that included a full lipid panel, glucose level, thyroid panel, BUN[3]/Creatinine[4] level, a complete blood count (CBC) and comprehensive metabolic panel (CMP); and patients were screened for disqualifying medical conditions. Many of the patients reported that they had lost weight under other diet plans, but regained the weight after the diet plan was discontinued. Patients were also provided with a form entitled "Patient Consent for Treatment." The form stated that in regard to hCG, "the goal and possible benefits of this therapy are to prevent, reduce, or control dysfunctional dieting and food associations, and to reset the metabolism." Licensee's form also states: "There are relatively no risks associated with Detox Diet for Doers." These statements are misleading and are not supported by medical science. Licensee meets with each patient, explains how to inject themselves with hCG, and instructs them on how to follow the diet plan. Patients are provided with syringes with hCG and instructed to self-inject every morning. Patients are also given a diet food list and are instructed to follow a specified 500 calorie diet for a minimum of 21 days. They are also encouraged to consume 8 – 10 glasses of water a day. Some of the charts reveal that some patients also received injections of vitamin B – 12 (without an established diagnosis of vitamin B-12 deficiency) and Zerona treatment, which is represented to be a "non-invasive, low energy laser that helps the body absorb fat by creating a micro pore in the fat cell wall allowing the "fat" components to seep into the interstitial space."

3.4 None of the charts document that Licensee conducts an adequate physical examination that include recording of vital signs or additional screening for cardiovascular disease and renal function during follow up visits in order to identify contra-indications for participation in the diet plan. Follow-up visits did not include any consultation with a nutritionist

[3] Blood urea nitrogen.
[4] Creatinine level is an indicator of kidney function.

to ensure proper protein intake, nor does periodic safety check of electrolytes. Licensee did not address patient health conditions that could be contraindications for the diet plan for Patient B (high blood pressure, Crohn's disease, high triglycerides (461), and a cholesterol/HDL ratio of 7.5); Licensee did not address patient health conditions that could be contraindications for the diet plan for Patient D (high blood pressure, high triglycerides (557), and a cholesterol/HDL ratio of 5.3); and Licensee did not address patient health conditions that could be contraindications for the diet plan for Patient E (high blood pressure, high triglycerides (217), and a cholesterol/HDL ratio of 5.9). Licensee's implementation of a very low calorie diet without proper medical screening and supervision of her patients was substandard and put patients at risk of harm.

4.

Licensee and the Board desire to settle this matter by entry of this Stipulated Order. Licensee understands that she has the right to a contested case hearing under the Administrative Procedures Act (chapter 183), Oregon Revised Statutes. Licensee fully and finally waives the right to a contested case hearing and any appeal therefrom by the signing of and entry of this Order in the Board's records. Licensee neither admits or denies but the Board finds that she engaged in conduct that violated ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined by ORS 677.188(4)(a), (b) and (c); ORS 677.190(9) making statements that the licensee knows, or with the exercise of reasonable care should know, are false or misleading regarding skill or efficacy or value of the medicine, treatment or remedy prescribed or administered; and ORS 677.190(13) gross or repeated negligence. Licensee understands that this Order is a public record and is a disciplinary action that is reportable to the National Data Bank and the Federation of State Medical Boards.

5.

Licensee and the Board agree to resolve this matter by the entry of this Stipulated Order subject to the following sanctions and terms:

5.1 Licensee is reprimanded.

5.2 Licensee is prohibited from offering or providing a low calorie diet plan to her patients. "Low calorie" diet plan" is defined to mean a diet plan that calls for the participant to intake 1200 calories or less a day, either with or without the administration of injections of human chorionic gonadotropin (hCG). This prohibition applies to Licensee and any clinic where she practices medicine.

5.3 Licensee is prohibited from prescribing hCG.

5.4 Within 180 days from the date the Board Chair signs this Order, Licensee must successfully complete a medical course(s) on the treatment of obesity and diet plans that are pre-approved by the Board's Medical Director.

5.5 The Board assesses a civil penalty that totals $10,000, of which Licensee must pay a civil penalty of $2,500 within 90 days from the date the Board Chair signs this Order; and $2,500 within 180 days from the date the Board Chair signs this Order. The remaining civil penalty of $5,000 will be held in abeyance contingent on Licensee complying with all the terms and conditions of this Order.

5.6 Licensee stipulates and agrees that this Order becomes effective the date it is signed by the Board Chair.

5.7 Licensee must obey all federal and Oregon state laws and regulations pertaining to the practice of medicine.

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5.8 Licensee stipulates and agrees that any violation of the terms of this Order shall be grounds for further disciplinary action under ORS 677.190(17).

IT IS SO STIPULATED THIS 1 day of October 2013

SIGNATURES REDACTED

ELIZABETH VANDERVEER, MD

IT IS SO ORDERED THIS 3rd day of October, 2013.

OREGON MEDICAL BOARD

SIGNATURES REDACTED

ROGER MCKIMMY, MD
BOARD CHAIR

BEFORE THE

OREGON MEDICAL BOARD

STATE OF OREGON

In the Matter of KENNETH JAY WELKER, MD LICENSE NO. MD22731	)))))	INTERIM STIPULATED ORDER

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians, in the state of Oregon. Kenneth Jay Welker, MD (Licensee) is a licensed physician in the state of Oregon and holds an active medical license.

2.

Licensee is a board certified general surgeon. Licensee entered into an Interim Stipulated Order with the Board in June 2013 in regards to a separate matter. That Order remains in effect.

2.1 The Board received credible information regarding Licensee that resulted in the board initiating another investigation. The results of the Board's investigation to date have raised concerns to the extent that the Board believes it necessary that Licensee agree to certain terms until the investigation is completed.

3.

In order to address the Board's concern, Licensee and the Board agree to the entry of this Interim Stipulated Order, which will remain in effect while this matter remains under investigation, and provides that Licensee shall comply with the following conditions:

3.1 Licensee agrees to immediately cease performing or providing Adipose Derived Mesenteric Cell Harvesting and Transfer (stem cell) therapy for any patient.

3.2 Licensee understands that violating any term of this Order will be grounds for disciplinary action under ORS 677.190(17).

3.3 Licensee understands this Order becomes effective September 19, 2013, at 5:00 p.m.

4.

At the conclusion of the Board's investigation, the Board will decide whether to close the case or to proceed to some form of disciplinary action. If the Board determines, following that review, not to lift the requirements of this Order, Licensee may request a hearing to contest that decision.

5.

This order is issued by the Board pursuant to ORS 677.410, which grants the Board the authority to attach conditions to the license of Licensee to practice medicine. These conditions will remain in effect while the Board conducts a complete investigation in order to fully inform itself with respect to the conduct of Licensee. Pursuant to ORS 677.425, Board investigative materials are confidential and shall not be subject to public disclosure, nor shall they be admissible as evidence in any judicial proceeding. However, as a stipulation this Order is a public document, and is reportable to the National Databank and the Federation of State Medical Boards.

IT IS SO STIPULATED THIS 18 day of September, 2013.

SIGNATURE REDACTED

KENNETH JAY WELKER, MD

IT IS SO ORDERED THIS 20th day of September, 2013.

OREGON MEDICAL BOARD
State of Oregon

SIGNATURE REDACTED

KATHLEEN HALEY, JD
EXECUTIVE DIRECTOR